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**STUDIES IN THE
LAND ECONOMICS OF BENGAL**

STUDIES IN THE LAND ECONOMICS OF BENGAL

BY

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With A Foreword By

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To
The Late Hon'ble Sir P. C. MITTER
K.C.S.I., C.I.E.
In Grateful Remembrance.

fixed jama but transmitted through them a security of tenure to a large number of holders of subordinate interests such as Mukraridars, Patnidars and Darpatnidars, besides the occupancy ryots and occupancy under-ryots of very recent origin. This transformation from the system that prevailed in the Hindu and the Mahammedan periods to the one of the present time was naturally gradual and the process complex. It was through partly legislative enactments based on the customary rights of the old and partly through judicial interpretations of those statutes that the rights of the various grades of holders of landed interests had been settled

The human memory anxious to drop the details of the complicated process of this evolution, retains only its results and not how they were achieved. Thus at this distance of time, because we have travelled a long way since 1793, the genesis of the present land system of Bengal appears to be lost sight of and shrouded in mystery. Except to those who made a special study of this difficult and somewhat dry subject, it is an unknown past. Ignorance is always a bliss. It naturally does not deter us from suggesting alterations in the arrangement governing the relation between the landlord and the tenant, nor does one hesitate to criticise it as uneconomic and unfair. Many of us do honestly believe that the Permanent Settlement and all its concomitants are absolute anachronisms in the present economic structure of the country, and the sooner they are removed the better for all concerned. Government are faced with a chronic deficit of revenue, the Zemindars are mostly insolvent, and suppliants for being given protection as wards of court, the tenants find their holdings uneconomic, and look upon the landlords as an unnecessary interceptor of the profit from land, the politician who is in the happy position of an on-looker, though not necessarily seeing always the best of the game, feels a righteous indignation against the landlord and

is out on a crusade against this enjoyer of earned income. These are serious suggestions for nationalisation of land. Thus the moment is undoubtedly psychological and changes are almost inevitable either for better or worse.

Retrospection is always salutary but it is more so before a momentous decision in the affairs of a nation. The time has come for a careful scrutiny of the genesis of the complicated land tenure for a correct appreciation of the difficulties that had to be overcome by its authors—so that the present problem might be approached from a proper perspective. Experience gained during 140 years is undoubtedly a valuable asset which if properly applied might prove to be a finger post to the right direction.

Knowledge is power and ignorance is weakness. Mr. Sachin Sen's compendium on this intricate subject deals with it lucidly and in an interesting manner. He has tried to trace the origin and development of the present system and its evolution through the different stages. The back ground of history, and quotations from important documents have rendered the subject attractive and its treatment realistic. The book besides supplying many useful information about the landtenure, and agricultural interests in Bengal, presents some of the facts clearly and concisely. There are very few books which deal with the up-to-date problems on the subject, focussing attention to the realities of the situation. There are authorities that deal with the historical portion of the landtenure but throw no light on the present day problem or make no attempt to explain the situation which is an outcome of the Permanent Settlement, as modified by later legislations and impositions. Mr. Sen's book is an admirable endeavour in that direction and thereby removes a long-felt want, regarding a subject which is of supreme importance to the community.

*15, Lansdowne Road,
Calcutta.*

B. P. SINGH ROY.

PREFACE

In presenting the book before the reading public I offer no apology. The preparation of the volume was undertaken at the instance and under the guidance of the Hon'ble Sir P. C. Mitter, Kt., K. C. S. I., C. I. E., then Revenue Member to the Government of Bengal but his unfortunate death was an irreparable loss to me. However, I worked on and finished the book by the end of 1934 and I find some consolation in dedicating the book to the Hon'ble Sir P. C. Mitter in grateful remembrance of his affection for me.

The Hon'ble Sir B. P. Singh Roy, Kt., Minister, Local Self-Government, Bengal, who has always evinced keen interest in my work has laid me under a deep debt of gratitude by writing the foreword to my book. Sir Bijoy Prasad whose reputation as a publicist is great is one of the most competent authorities on the land problems of the province, and this foreword, I am proud to confess, has greatly enhanced the value of my work.

The library of the British Indian Association has been the chief laboratory for my work. Mr. P. N. Tagore, President of the Association, made the progress of my work smooth by extending his sympathetic encouragement. I shall fondly treasure his unfailing interest in my work.

This publication would have been long delayed but for the appreciative encouragement of Mr. Probhanath Singh Roy, one of those brilliant youngmen of whom the land-holding community may justly be proud.

Of the numerous friends and well-wishers I must particularly mention my friend Mr. Karuna Kumar Nandi (Editor, Insurance and Finance Review) to whom my thanks are due for the proof-reading of the book. For many valuable suggestions I am indebted to my friend Mr A. K. Ghose, Bar-at-law.

Ballygunje.
25th March, 1935.

S. S.

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INTRODUCTION

Agricultural economics is the study of man in his relation to land. Agriculture is the fundamental industry in Bengal and it is also the greatest of our industries. Land is the farmer's factory. It is to be noted that profit can never be the sole object of farming. "Love of it for its own sake, attachment to the soil, the desire for independence, family tradition, and other quite irrational causes combine to balance the purely economic side of the question."

Agricultural population remains for humanity a reservoir of energy whereas an excessive growth of industry brings about rapid human wastage.

Agriculture produces wealth: it employs the largest number of human units in our province; it is a fine mode of life, an industry which develops some of the finest qualities in those engaged in it. Ours is an agricultural province but the most interesting phenomenon is the absence of our interest in the land. In any economic discussion, we hear of reconstruction, rationalisation and reorganisation; "they have been thrown like lifebuoys to the various industries that have shown signs of distress in the economic blizzard." But now all the remedies go under the label of "planning."

In agriculture, the first essential thing is that the farming unit must be economic. What is an economic unit is of course a delicate question. "The optimum size of a farming unit depends so much on the factor of management, and that factor is so personal, variable and incapable of measurement that it is impossible to decide on the economic size of unit except by empirical methods." The size and shape of fields is a question deserving close attention.

Agriculture is a kind of dual partnership between the landlord and the tenant. Before the Bengal Tenancy Act

of 1885, the landlord was the dominant partner. The landlord was responsible for many improvements; he sunk capital in drainage, land reclamation and other necessary improvements and relief works. But now legislation has relegated the landlord to the position of a receiver of rent. His power of control is negligible, low returns or no returns on the investment in agriculture have made capital extremely shy. The landlord's powers have been crippled, so his interest has slackened. The tenant has now security of tenure, the right to enjoy the fruits of his investment.

The Bengal Tenancy Act is not a measure for the improvement of land: it has taken away the powers of the landlords on the plea of protecting the welfare of ryots and it has also managed to screw better revenue under stamps by promising to decide every dispute in court. Since the Act, litigation has increased to a considerable extent: the relations of landlords and tenants have been strained whereas the Government could enjoy more revenue out of the suits. It is a case of sowing the seeds of disunion among the landlords and tenants for the financial interest of Government. The Act has done another mischief: there is evident rivalry among the tenants to usurp the due rights and privileges of landlords but they have forgotten the interests of lands. Every one talks of land ownership: no one talks of land improvement. Conflict breeds conflict and our attention has gravitated from the land to the landlord. The soil goes on deteriorating but the conflict among landlords and tenants grows more acute and more bitter.

The Tenancy Act is an open recognition of the principle that the welfare of ryots is the concern of the State and the indifference of landlords to agricultural improvements is largely due to the Tenancy Act. Rural Bengal in the nineteenth century was the creation of landlordism and even to day, the landlords are the unrecognised financiers of the ryots.

It is well-known that the net return on capital invested in agricultural is not equal to the income derived from other long-term investment. Over and above the low return, the shrinkage in world trade has made agriculture a losing concern. In Bengal, we have to export tea and jute ; we cannot absolutely depend on internal trade. If there is no recovery of world-trade, our jute would be less exported and that would spell economic ruin for the province. The farmer only produces: the business of marketing lies in the hands of specialists. The farmer has no control over price and is therefore suffering. Moreover, the marketing cost of agricultural commodities is higher. We cannot forget that in agriculture we get small-scale and widely-dispersed production, perishable produce, market variation, quantitatively and qualitatively, seasonally and from year to year, both in production and consumption.

Our agriculture receives no assistance from the Government. Agricultural loans are negligible ; Co-operative Banks are hopelessly inadequate ; land-mortgage banks, five in number, are very stiff in granting loans. But in Britain, agriculture receives better treatment from the Government: direct grants are estimated to have amounted to F 70 millions in the last thirteen years, that is, about F 6 millions a year ; indirect grants to another F 4 millions a year : relief by derating amounts to about F 16 millions per annum ; preferential rail rates are estimated to be worth F 800,000 per annum to agriculture.

It is claimed that any money spent on agriculture in a permanently settled area is to be taken as money wasted from the Government standpoint. The claim is based on the obvious hypothesis that any improvement in agriculture would give no corresponding return to the State-exchequer in the form of an enhancement of land revenue. First, it is

very bad economics to dry up the resources of the agriculturists by refusing any help because impoverished ryots are bound to affect the general revenue of the Government. Secondly, an increase in the purchasing power of ryots would set in motion all other economic forces in the country which would compensate the Government. Thirdly, the scope for indirect taxation expands along with the economic sufficiency of the ryots. In any case, improved agriculture should be the desideratum of every State and any deviation therefrom on the plea of inelastic land revenue is economically unsound.

Agricultural depression in a very obstinate form has been operative since 1929. The return on capital invested in agriculture has dwindled to nothing. The cost of production and the prices received are out of line. The economic structure is competitive and in a competitive order it is the job of price to equate supply and demand. The accepted law¹ of supply and demand is that prices tend to rise or fall as supplies decrease or increase or as demand increases or decreases. But the price fluctuations are violent and necessarily pernicious and disturbing. The price-mechanism is not working well: it can no longer regulate the output of goods in accordance with the demand. It is the steadiness of price that is desired.

The fall of prices clearly demonstrates that money and price have not fulfilled their function, that is, the equating of supply and demand. "The price level," as the Macmillian Committee state, "is the outcome of interaction between monetary and non-monetary factors. The recent world-wide fall of prices is best described as a monetary phenomenon which has occurred as the result of the monetary

1. "The term 'law' means nothing more than a general proposition or statement of tendencies, more or less certain, more or less definite."

system failing to solve successfully a problem of unprecedented difficulty and complexity set it by a conjunction of highly intractable non-monetary phenomena."

The problem then is: how to bring production and consumption into line with one another. There are two schools of thought: (a) it is held that the regulation of production and consumption by price is still a workable system which would respond to modern needs, (b) others think that some method of control is necessary in the place of price. Here the agitation for planning comes in.

It must be made clear that if planning come in, the competitive system goes out. The competitive system is based on private property and freedom of enterprise. Frankness requires it to be told that to *laissez faire*, we owe industrial developments and industrial instability, political institutions and social maladjustments.

Price-fluctuations exercise the most pernicious and harmful effects in the competitive order. They convulse settled habits and throw the producers into the pits of insolvency. Price-fluctuations are due to variations in the value of money, in demand and in supply. The farmer cannot control variations in the value of money: he can only to an extremely limited extent influence the demand, such as, by an increase of the purchasing power, a reduction of distribution costs, an effort to improve consumption habits. It is only the supply side which is within the control of the farmer. Even the supply side, on examination, shows that it is limited by weather conditions,¹ planned production, seasonal production, market conditions, farmer's finances. Thus the possibilities of the control of supply are limited.

1. Agriculture is a partnership between Man and Nature and Man proposes while Nature disposes.

Production control is open to serious defects. The Stevenson Rubber Restriction Scheme failed; the Brazil Valorisation Scheme for Coffee failed; the control of nitrate supplies failed in Chile. If the control is voluntary, it is also bound to fail. The American Grain Stabilisation Corporation carried on an intensive campaign for voluntary reduction of the wheat acreage in 1930 but the net reduction was 2 p. c. One must appreciate the fact that the precision and accurate forecasting which could be applied to commerce can not be applied to agriculture which is governed by uncertain weather conditions, rapidly fluctuating prices of live-stock and produce, disappointing yields etc. The human element in the form of the agricultural labourer plays also an important part.

Moreover, production control, to be effective, must cover all products. But an all-round reduction is uneconomic, because "the efficient producer is penalised to the same extent as the inefficient; land suited to the crop is abandoned to the same extent as the ill-suited land. It is the sub-marginal producer who ought to disappear."

The best form of controlling production is through marketing. In agriculture, one expects better returns by efficient methods of distribution, stronger bargaining power on the farmer's side, reducing costs of production and by increasing consumption.

The control of production without public ownership of land is bound to have serious effects. This brings us to the question of nationalisation of land.

The landlord-tenant system prevails in our province. Now, there are economists who want to substitute public ownership for private ownership. They say that the landlord-tenant system is weakening. If it goes, it will go because the position of the present landlord has been made

economically unstable. The system shows defects because legislation and taxation have made the landlords useless and weak.¹

In England, the Conservative party does not contemplate public ownership of lands beyond the extension of small holdings. Mr. Llyod George's Liberal Land Committee (1925) advocated the transfer of agricultural land to the State in return for land annuities and the adoption of a system of landholding to which they gave the name of "cultivating tenure" with reasonable security to the tenant practising good husbandry ; the immediate authorities for the administration the land were to be county authorities. The Labour policy advocates the acquisition of all agricultural lands by the State and its management by elected county authorities, compensation to present owners being made by land bonds. In 1926, the Labour policy adopted was that the existing agreements would be continued for the time being, (a) that the county agricultural committees would in suitable cases cultivate lands themselves on a considerable scale, (b) that the system of tenant-farmers of small holdings could be advantageously continued, (c) that the public utility companies or forms of collective or co-operative farming for the cultivation of large tracts of land could be established.

In our province, there is a regrettable amount of loose talk about the nationalisation of lands. If the Government pursue a policy of nationalising the lands, they can of course smoothly get all the lands under direct management.

1. "Let it be stated over again that no advantage on balance, is claimed for this system of land purchase (by the State) when contrasted with the system of private ownership which has prevailed so long ; it is only put forward to provide an orderly way out of the difficulties which the breakdown of the old system is creating"—Messrs Orwin and Peel in "The Tenure of Agricultural Land."

Let us take instances: when touzis are sold for arrears of revenue, the Government need not search out new bidders for resettlement; the Government can also issue instructions for the acceptance of the land in lieu of heavy taxes. If the Government are really serious and adopt some such methods, they can peacefully get large tracts of land under their direct management within a brief space of twenty-five years. But the question remains, if the Government would be well advised to break the landlord-tenant system in favour of public ownership. The growth of population, the ideal of equal inheritance for all sons, the importation of individualistic notions, the break up of the joint family—all these are working for the dismemberment of estates. Over and above these handicaps, the increased burdens of taxation of profits from lands, the deterioration of lands and agricultural depression with consequential low returns from capital invested in lands have combined to break the lure of landlordism. At this stage, the advocacy of nationalisation of lands has little force, less sense. Our agricultural problems are not bound up with the question of ownership; they lie deeper, and a more scientific approach to the question is desired.

The absence of contact between the Government and agriculturists which is a regrettable feature of our rural economy should be remedied. Sir F. A. Nicholson, a distinguished authority on problems of Indian rural economy, said:—"It is impossible for a Government to influence individually millions of petty peasants; they are individually too isolated, too suspicious, too shy to accept new ideas or to undertake experiment in new methods; similarly, they are too poor, too powerless to produce the best products, to get the better of the middleman and the best of the markets. There must be some organisation which enables Government to act upon a body of men at once and to serve as intermediary between the Government and the individual: an

organisation which can be advised, educated, reasoned with and listened to, which will discuss together the suggestion of authority, and will through its better educated or bolder members provide intelligence to absorb new ideas, find courage and funds to attempt new methods and combine both for the improvement of products and better sale of the same."

To return to our question: low price is the root trouble. Our attempt should be to stabilise the general price-level; not only that, we should also try to raise the general price-level. Our objective should be, so far as it lies within the power of the country, to influence the international price-level, first of all to raise prices a long way above the present level and then to maintain them at the level thus reached with as much stability as can be managed.¹ It is well-known that stable prices do not indicate stable income. A short crop at stable price means less income but a short crop may be counter-balanced by higher prices.

The regulation of agricultural industry under a centralised control is open to serious limitations:

- (1) the agricultural products have no uniformity in quality,
- (2) farming does not require heavy initial capital, (3) there is no marked limitation in the raw material nor in production,
- (4) the demand for most products is not elastic.

The best way is to improve the marketing organisation. The restriction of supply undoubtedly results in higher prices but the danger is there that it may result in the restriction of the purchasing power. To quote Prof. Pigou, people want prices to rise in order that

more "people may be employed ; they do not want less people to be employed in order that prices may rise."

In our country, we need restriction of imported supplies¹ at least for two reasons; first, to raise prices of our indigenous products; secondly, we need a favourable balance of trade for meeting our foreign obligations. But we should see that our restriction policy should not make other countries hostile. That would prove suicidal.

Agriculture undoubtedly is the greatest of our industries. There is no thought-out national agriculture policy in our country. We are an uprooted people, with no vision, no consolidating outlook. Our Government have zigzagged from one policy to another with no definite programme. The problem is essentially not of production but of distribution. International trade cannot remain asphyxiated: it must move on. Debtor countries must be allowed to pay their debts or they must default; creditor countries must allow payment of debts or cancel them. The illusions of money must go: payment must be eventually in goods and services. Money is after all a medium of exchange² and a country cannot go on indefinitely paying in gold. A creditor country has great many responsibilities: she should not raise obstacles against payment of obligations in goods. If there are restrictions which go against payment of debts, it is the creditor country which would ultimately suffer.

Agricultural depression is to be counteracted by a steady increase of demand for its products and not by stifling human efforts in the production of wealth. That means that there must be a rise in the standard of living:

1. Import prohibitions, tariffs, voluntary compulsory quotas, import monopolies, exchange depreciation are some of the methods.

2. It is said that money is just like a belt: it fits in with the size of the wearer.

the power of consumption is to be increased, the demands for new things are to be created. This increase of the purchasing power of the agriculturists would help the re-absorption in productive occupations of the unemployed and this in its turn is of course dependent upon an improvement in the financial and economic conditions of the world.

The greatest stumbling-block to our agricultural improvement is the growth of our population. The land is deteriorating whereas the population is increasing. Thus the pressure on land is growing more intense. Mere increase of numbers enhances the problems, retards the increase of the purchasing power, requires more expenditure per head. It is the human unit that is to be improved, not the human numbers.

Unsound planning is more mischievous than no planning at all. Planning to be sound need not be revolutionary. Socialism or Communism or Dictatorship is not the *sine qua non* of planning. There are methods of planning and our planning of agriculture should not ignore the particular and peculiar conditions of our province.

An individualistic democratic State with freedom of competition and ownership of property can achieve a determinate and measurable economic goal by a greater integration of agricultural, industrial and monetary policies. In launching on an experiment of planning, the State is to play the role of a consummate architect: the country would be heading for a disaster if it is guided by those who are merely brokers of Russian ideas. Planning is a creation: it is not a mere decoration.

STUDIES IN THE LAND ECONOMICS OF BENGAL

CHAPTER I

LAND REVENUE ADMINISTRATION UPTO 1789

There was a clear, well-marked notion in Hindu India about the origin of property in land. Property arose from first occupation : that was the Hindu conception. The main features of the Hindu system were :

First, Manu said : "A field is his who clears it of jungle, game is his who first pierces it." The Indian Poet Bharavi also sang in the same tune. Vyasa, Narada, Yājñavalkya and other sages were of the same opinion. The Indian sages thus took a practical view of the proprietary right.

Secondly, earth, according to the ancient Indian authorities, was *res communes*, not *res nullius*, as the Roman Jurists believed. Jaimini, Savara and others held that earth was the common property of all, but occupation would create right in communal property. The Hindu conception differed from the Roman, as no private right, according to the Roman Law, could be created in *res communes*.

Thirdly, adverse possession played its part in the Hindu law. Property in India arose from "adverse possession ripened by prescription", the self-same doctrine which was warmly advocated by the great German Jurist, Von Savigny. The Institutes of Vishnu laid down that possession for three generations made up for deficiencies of title. Vrihaspati held that possession for 30 years created an absolute and indefeasible title. Vyasa held, "if the land of one is possessed by another for 20 years, his right to sue for

possession ceases." Raghunandan, a great authority in Bengal, held that possession for more than 20 years perfected title by prescription.

Fourthly, though the ownership was vested in the community, the cultivator was entitled to the usufruct and had full possessory rights in it. The right of the cultivator to the beneficial use of land was recognised by the Hindus.

Fifthly, the Hindu system was hereditary. Private rights in land descended lineally.

Sixthly, the Sovereign was not the proprietor of the soil : he was entitled to a share as the price for the protection afforded to life, liberty and property. "This was such a well-recognised idea that you will find in many Sanskrit books, the word "king" is used as synonymous with the expression, 'the appropriator of sixth of the produce.' " Even so late as the fifteenth century, Srikrishna Tarkalankar in his commentary on the Dayabhaga of Jimut Vahana said: "By conquest and other means, a king acquiring a kingdom has no other rights over his subjects than that of collecting taxes."

In discussing the main features of the Hindu Land System we find that there are three parties interested in the land and its produce, viz., the king, the cultivator, and officers of revenue and others interested in land. There were no independent intermediate interests and there was thus no relation of landlord and tenant. The king is entitled to a share, commonly one-sixth or one-eighth, according to the nature of the soil and the labour necessary to cultivate it ; in times of prosperity he is entitled to $1/12$ th; in times of crisis he may take $1/4$ th. The king is entitled to half of old hoards and precious minerals in the earth.

It was the duty of the king to see that the land was cultivated by the tiller; the Sovereign assessed the occupier

with revenue and "if a person who has occupied land omits to use it and the claim of the Crown is consequently affected, the Sovereign is entitled to take measures for the protection of the revenue."

Cultivation was through necessity insisted upon. The Hindu sages were careful to give direction to the effect that the cultivable soil might not remain untilled. Yājñavalkya laid down, "When a man does not cultivate either himself or by means of others, he should be made to pay to the owner of the field the amount of grain which the field would have yielded if it had been duly sowed with crops." Similar directions were given by Vyasa, Narada and others.

We have seen that the cultivators paying revenue to the king in lieu of their protection were really owners of the soil. There were various grades of cultivators, having different interests in the soil. The Khoodkashts who had an hereditary right to cultivate the lands of the village in which they resided paid higher revenue as they had higher privileges. Their rights were regulated by custom. They enjoyed various privileges such as preference in the choice of lands, the liberty to dig wells upon their lands, fees from other cultivators, allotments of revenue-free lands, the use of the production of the wastes for the construction and repair of their houses, the right of pasturing their cattle upon the unoccupied lands of the village, the right to occupy so long as they cultivated and paid the customary revenue, the right to pay the customary rate which could not be raised etc. That was a period when there was a competition for cultivators and no competition by cultivators for land. Necessarily the cultivators paying higher revenues had to be given higher privileges, though under British rule the state of things is reversed viz., the cultivators having higher privileges pay the lowest rate. The proprietary rights of the Khoodkasht ryots were of a very complete kind, though not unlimited.

The second class of the ryots were the immigrants who were permanently settled in the village; they paid less revenue than the Khoodkasht; their rate was also customary. They received 45% of the crop as their share.

The third class of ryots, called pyekasht, who came from another neighbouring village to cultivate lands in the village which the Khoodkashts were unable to cultivate, paid the lowest rate of revenue. They were mere sojourners; they received 50% of the crop as their share out of which they paid fees to the Khoodkashts. Though they had no proprietary right, they could not be ousted between sowing and harvest.

Besides the king and the cultivators, there were others interested in the produce of the land. Maine speaks of the village system where the superintendent of a village is to have the share of the king in food, drink, wood and other articles as his perquisite; the superintendent of ten villages is to have the produce of two ploughlands, that is as much as can be tilled by two ploughs each drawn by six bulls; the superintendent of 20 villages is to have the produce of 5 plough-lands; the superintendent of 100 villages is to have the produce of a small town; the superintendent of a thousand villages, that of a large town. The village was supplied with certain hereditary officers, generally twelve such as headman, village registrar, escorts who inquired into crimes, who watched the crops, the distributor of water, the astrologer who announces the seed time and harvest, blacksmith, carpenter, potter, washerman, barber, silversmith. They were all paid by a share of the produce. In Bengal, generally they were allotted lands, called chakran or service lands, free of revenue, or at low rates instead of other remunerations or at least instead of money payments.

The assessment of revenue was upon individual cultivators; the headman and the village were responsible

for payment. The cultivator was dealt with individually. When the headman refused to agree to assessment, the settlement was sometimes made with the cultivators or the revenue was framed for one year or three or five years. The headman was not a farmer nor a contractor, he was only responsible for the payment of revenue of the village. He could not be dismissed by the State except for his failure to make good the revenue. He was elected by the village subject to the sanction of the State. The headman made over revenue to a superior representative of the State ; in case of direct payment he paid to the Chowdhry who was the fiscal head of the Pargana, collected revenue which he transmitted to the treasury, preserved peace and retained 10% of collections as remuneration or was paid by assignment of Jaigeers, a precursor of the Zamindars of the Mahomedan times.

From the beginning of the 13th century came the Mahomedan conquerors. They had their own system of Jurisprudence and naturally a conflict was inevitable. The characteristics of the Mahomedan system were :

(1) The Mahomedan system was non-hereditary or anti-hereditary ; it wanted at every step recognition by the State, whereas the Hindu system was hereditary.

(2) The Mahomedan system was naturally centralised, while the Hindu system contained the village communities.

(3) The principle of Mahomedan Government was that "if the Iman conquered a country by force of arms he was at liberty to divide it among the Musalmans or he might leave it in the hands of the original proprietors exacting from them a tax, called Zezyat, and imposing a tribute upon their lands known as the Khiraj," whereas the Hindu principle was, as laid down by Yājñavalkya, that as soon as the country was brought under

subjection, the people ought to be governed according to their own laws, manners and customs.

(4) The great prophet of Arabia laid down in tune with Manu that "whoever cultivates waste lands does thereby acquire property in them." According to Abu Hanifa, the permission of the Chief was necessary for the acquisition of proprietary right. But his disciples, Abu Usuf and Mahammad maintained that no permission of the Chief was necessary to make the cultivator the proprietor.

(5) The proprietorship of the soil was vested in the king whereas, according to the Hindu theory, the proprietorship resided in the cultivators.

(6) The customary rent which had prevailed under the Hindu kings was superseded by the Mahomedans and a new custom of increased proportion was established, though not approaching competition rent.

(7) The share of the produce was commuted into fixed money rent with the result that there was no doctrine of increase from unearned increment. According to the Mahomedan theory, a change in the mode of assessment viz., fixed money rent instead of share of the produce, implied an unconscious change in the proprietorship of the soil from the Sovereign to the cultivator. The imposition of money-tax was, according to the Mahomedan law, a distinct recognition of the absolute proprietary right in the soil of the cultivator: it operated as a sort of transfer of the Sovereign's right in the soil to the cultivator. It was true that the mode of assessment for a fixed money rate was prompted not by any conscious desire to transfer proprietary rights from the Sovereign to the cultivator but by the evident convenience in the collection of revenue.

Thus, we find that the Mahomedan system of jurisprudence was fundamentally different from the Hindu system and the conflict between the two different principles was not of a serious character as was apprehended. The Hindu system was frankly continued by the Mahomedan invaders and as such it might be said that the Musalman conquest of India was never complete. The customs, usages and customary laws of the Musalman Sovereigns practically made no headway. The Hindu hereditary chiefs were not disturbed and they got sanads for payment of nominal sums as rent. In India no land was distributed among the Musalmans: a small portion of waste lands might have been given to soldiers as Jaigirs. The rules applicable to infidels, as laid down by the Mahamedan Jurists, were not applied and they respected possessions. In the complicated fiscal organisation, the aid of the Hindu officers was considered essential; the Mahomedan rulers employed Hindu agencies in the collection of revenue. Either from indolence or from convenience or from the intrinsic merit of the developed system of Hindu Jurisprudence, the Mahamedan rulers followed a policy of non-interference with the internal fiscal management of their Indian Empire and full opportunity was afforded for the progress and development of the Hindu system of thought, unfettered by semitic influences. It was a curious but significant phenomenon in the history of India. The Hindu collectors of land revenue during the Mahomedan regime had to perform almost all the functions of the Sovereign: they heard and decided civil and criminal cases and enforced obedience to their decrees and sentences; the police administration was under them; in the management of fiscal affairs their authority was supreme.

The Mahommadan invaders imposed Khiraj on the residents left in the enjoyment of their land: it was imposed on all lands capable of production, whether productive or not. The "Ooshr," a lighter tax, was imposed upon believ-

ers i. e., Muslims: it was imposed on lands actually productive and in respect of actual produce. The Khiraj was of two kinds: "Mookasumah" being a proportion of the produce, say one-fifth or one-sixth of the actual crop, the other class, "Wuzeefa," being a personal liability (a fixed money rate) on account of a definite portion of land, depending on its capability and not on its actual produce. "Mookasumah" was assimilated to the "Ooshr" and "Wuzeefa" was the kind of Khiraj for conquered unbelievers, the limit being half the gross produce, a heavy tax no doubt. The Wuzeefa Khiraj resembled the tax paid by the Khoodkashts in as much as the former depended on the capability of the soil; it recognised a proprietary right in the cultivator extending to the productive power of the soil but not to the soil itself; the right was an alienable one requiring no permission from the Sovereign whereas the Mookasumah land could not be sold or mortgaged without the permission of the Sovereign. The rendering of Wuzeefa Khiraj distinctly implied ownership; herein lay the germ of Landlordism.

Khiraj was remitted when the land was overflowed by water or cut off from water rendering it uncultivable or the crop destroyed by calamities. The Mookasumah Khiraj was paid in kind and the remedy for non-payment was the hold upon the crop. The Wuzeefa Khiraj was a personal liability and the remedy for non-payment was suit and imprisonment; non-payment of Khiraj could deprive the cultivator of the land as that would violate the proprietary right.

During the Mahomedan regime, there was a constant struggle to increase the assessment and the limit of half the gross produce was reached, possibly during Allauddin's reign. Historians also contend that Khiraj was not formally imposed before Allauddin whose reign dated from 1296 to 1316. We have seen that the Mahomedan invaders continued

the Hindu revenue machinery : the Hindu Chowdhry became the Mahomedan Crory, "administering a chucklah or a district yielding a crore of dams or two lacs and a half of rupees a year and he was one of the officers from whom Zemindars spring". He got an allowance of 5 p. c. on the collections as his remuneration, together with small allotments of the revenue for his subsistence, called nancar, to probably about the same amount. Gradually, the headman sank into the position of a subordinate revenue-payer : the village-community decayed, the ideas of personal and individual right as ingrained in Mahomedan Jurisprudence asserted with the result that the zemindars acquired the greatest influence, especially in Bengal.

Before Akbar's settlement, known as Todar Mull's settlement, the first scientific settlement of land revenue, there were honest efforts by Allauddin, Sher Shah and Selim Shah in the assessment of a fixed rate on measurement. To use the words of a learned historian, Akbar's settlement was "only a continuation of a plan commenced by Sher Shah". However, Akbar's revenue system, scientific as it was, was the model of all future reforms. The chief characteristics of Akbar's revenue reforms were the following :

(1) The standard of measurement was fixed for the first time.

(2) He abolished all arbitrary taxes and assessed the revenue upon the true capacity of the land, the land being distributed into four classes first, Poolej land, or land which was cultivated for every harvest and which did not require to lie fallow ; second, Perowty land, or land which was allowed to lie fallow for a short time to recover its strength ; third, Checher land, or land, which had lain fallow for 3 or 4 years from excessive rain or inundation ; fourth, Bunjer-land or land which had lain fallow for 5 years or upwards.

(3) An average of ten years was then taken by ascer-

taining the actual produce of various kinds of land during the preceding ten years, from the 14th to the 24th of the reign.

(4) The new rate of assessment was lower than the former rate.

(5) Authorities do not agree as to the proportion of the produce taken by the State. It is said by some to have been one third for poolej and perowty land; another authority says that $1/4$ th of gross of produce or one-third of net produce was taken. In the Appendix to the Fifth Report, it is stated that if the revenue were paid in kind, the Government's share of the ordinary crop was one-half; one-third was taken of crops grown out of season or artificially irrigated; one-fourth to one-eighth of crops difficult to cultivate. All these might be commuted for a fixed money-payment of one-fourth of the gross produce, called rebba, which was estimated by taking an average of different kinds of land and was irrespective of the actual crop cultivated. This commutation for fixed money-payment was optional but it became extremely popular.¹

(6) Remissions of revenue were permitted on account of calamities. Deductions from the assessment were made when the land was found to be inferior to average land of the class in which it was assessed. When Khirajee land was not cultivated but kept as pasture, the holder had to pay six dams yearly for every buffalo and 3 dams for every ox, instead of other revenue.

1 The grain division was made either by actual division or by estimating the standing crop and declaring a certain proportion belonging to the King. There are positive disadvantages in the grain division: (1) it was a source of dispute, (2) it was extremely troublesome for the State-officers to manage, (3) it afforded the maximum opportunity to the cultivator to pilfer and conceal his produce, (4) it caused loss to one party or the other when the grain markets were established and the values thereof rose, (5) in a case of grain division, a slight accident might double the assessment.

(7) The settlement was for ten years.

(8) It was a settlement made with the ryots: "whether the revenue was paid direct to the officers of government or by the village community jointly through their headmen, or through hereditary zemindars of a superior grade, the quota due from each ryot was fixed and recorded; that was the whole system from which all calculations started." Mr. Phillips held—"The settlement of Todar Mull was an attempt to return to the old Hindu system, as far as getting rid of the Zemindars was concerned."

As far as Bengal was concerned, Todar Mall's settlement was imperfectly applied: there were large tracts left unmeasured and in those parts the buttai system of collection of revenue on the division of crops was continued.

It would also be noticed that in the Mahomedan times, the fiscal organisation was much more elaborate. The whole country was split up into fifteen Soubahs in Akbar's time. The Soubah of Bengal was divided into circars, the circars into pergunnahs, and the pergunnahs into turfs, kismuts, and villages.

Above the Zemindar, the fiscal organisation was maintained by the State. There was crory in charge of the circar; there was a Foujdar Aumildar administering a chucklah. The Kanungo who kept revenue records had under his control a pergunnah; the village revenue was administered by a headman: a putwary's position in the village was similar to that of a Kanungo in the pergunnah.

Todar Mall's settlement was the model of all subsequent settlements. During the palmy days of the Moghul administration, the revenue collectors were not oppressive; there were various checks to rack-renting. The following instructions offer an illuminating example: "If (God forbid) any calamity from earth or sky overtakes a mahal, strongly urge the amins and amils to watch the standing crops with

great care and fidelity, and after inquiring into the sown fields they should carefully ascertain (the loss) according to the comparative state of the present and past produced (Hast-o-bud). You should never admit as valid any sarbasta calamity, the discrimination (tafriq) of which depends solely on the reports of the chaudhries, kanungos muqaddams, and patwaris. So that all the ryots may attain to their rights and may be saved from misfortune and loss and usurpers may not usurp (other's rights). Strongly urge the amins, amils, chaudhries, kanungos and mustaddis to abolish balia or (Halia) exactions (akhrajat) in excess of revenue and forbidden abwabs (cesses), which impair the welfare of the ryots. Take securities from them that they should never exact balia or collect the abwabs prohibited and abolished by His Majesty. And you yourself should constantly get information and if you find any one doing so and not heeding your prohibition and threat, report the fact to the Emperor, that he may be dismissed from service and another appointed in his place". This clearly shows the humane spirit of the Moghul administration.

At the time of scarcity, the Moghul ruler obtained from the land "a net one-half" of the produce and sanctioned also reduction of assessment. A *firman* of the Emperor Aurangzeb, which was an interesting instance in point, was as follows :

"If Khiraj-i-muazzaf has been fixed on land and a calamity befalls some crop of the land by which it is not totally destroyed then you ought to inquire into the case and deduct from the revenue to the extent of the injury done ; and from the portion that remains safe, take so much of the produce (mahsul) that the ryot may have a net one-half, e. g., ten maunds are usually produced in a field ; on account of the calamity six maunds only are left (safe) ; the net half of this is five maunds ; therefore, you should take one maund only

(as revenue), so that the net half, viz., five maunds, may be left to the ryot."

During the later days of the Moghul rule when the central power became weak, there were exactions and oppressions. But the decadent period of Native rule, as Mr. R. C. Dutta pointed out, had many sins to answer for, but in respect of overassessment of the soil, the East India Company were the worst sinners. In Bengal, the actual collection of land revenue during the last three years of the Nawab's administration varied between 6 and 9 million rupees, but in the first year of the Company they screwed up the revenue to nearly 15 million rupees and by 1793, to 27 millions.

The Amini Report

The Amini Report, submitted to the Hon'ble Warren Hastings, Governor-General at Fort William, on the 25th of March, 1778, by the three British officers of the Company, namely, D. Anderson, Charles Croftes and George Bogle, contained much valuable information on the system of land revenue of Bengal prevalent before the Company's Administration. "The Amini Report was the first technical and professional explanation of the system employed in collecting the land revenue of Bengal that was placed before the Company."¹ It is such a valuable document that a brief summary of the facts stated in the said Report is given below :

During the reign of Akbar, there was a regular assessment of the lands of Bengal; the lands were valued, the rent of each village and villager ascertained; a regular gradation of accounts was established.

From Akbar to Jafir Khan, the annual amount of revenue and the modes of levying it were preserved with little variation. New assessments were made by Jafir Khan;

1. Studies in the Land Revenue History of Bengal by R. B. Ramsbotham.

Alivardi Khan added to these taxes; the successors of Alivardi Khan made further increase of taxes. Thus the valuation of Bengal lands by Akbar could not be applicable during the period of the Company's rule.

The revenue of Bengal may be classed under three heads, viz., Mal (principally land rents), Sair (principally customs), Bazijama (as fines, forfeitures and fees on marriages etc.). Among all the various sources of revenue and profit, land rents were the most important.

Almost all the lands of Bengal are held under some person who collects the rents, pays revenue, and stands between the Government and the immediate tenant of the soil. The persons who hold land subject to the payment of revenue are Zemindars (the superior of a district), Chaudhuris (inferior to Zemindars), Talukdars (inferior to the first two classes). The word "Ryot" means a subject.

Ryots, with respect to the manner of paying their rents, may be divided into Hari (paying fixed rent per bigha, whether cultivated or fallow), Fasli (rent depending on the crop which their land is made to produce) and Khamar (paying rent in kind and giving a proportion of the crop as the rent).

There were considerable quantities of land in every district throughout Bengal, exempt from rent by a grant either of the Emperors or of the Zemindars or Superiors of the district. The expenses of the Nazim, the Diwan, the great officers of the State, the establishment of artillery and of all principal departments of the Government were provided for by assignments of the revenues of particular tracts of land. The districts of which the revenues were so appropriated were termed Jagir Mahals. Assignments were granted for the support of individuals; hereditary assignments were termed Altamgha, life-assignments called Zati, those held officially or for performing particular services were called Mashrut.

Before Jafir Khan, a considerable proportion of revenue of Bengal was assigned in Jagirs. During Jafir Khan's government many of the grants were resumed and in lieu of them others were given in the Province of Orissa. The system of Jagirs fell into disuse after Jafir Khan's death; the expenses of different departments of the State were defrayed from the public treasury.

A large Zemindary is divided into gaons or villages, tarafs or dihs comprehending a number of villages, and parganahs containing several tarafs. In each of these places, there is a cutchery for collecting and managing the revenues by the officers of the Zemindar.

The Mandal, the chief ryot of a village, acts as a mediator between the ryots and Zemindars' officers. The head officer of a zemindar in the village is a karmachari, collecting rent or putwari keeping the accounts; another officer, the Halshanah, is employed in measuring the ground of the ryot, distributing land to new tenants and in gathering payments in kind. These officers are seldom changed and possess experience and knowledge. A gomastha who is placed as check over the officers mentioned is frequently changed. In extensive Zamindaris, it is usual for the Zemindar to farm out the revenues of particular districts at a certain annual sum.

The principal objects of all accounts of revenue are to ascertain the quantity of land, its Jama (i.e. Asal Jama in contradistinction to Abwab Jama), payment or receipts on the Jama, and the balance or arrears.

The manner in which the accounts of a district are kept is in the following way: First, the Chitta is an account of all the lands of a village; second, Goswara Paitha is an abstract of all the Chitta accounts of a village, arranged under the heads of Paikasht, Khoodkasht, Khamar, Devatra etc.; third, Ekwai is a particular account of the names of ryots and the measurement of the different spots of land which

they hold; fourth, Jamabandi specifies the name of the ryot, the quantity of land which he holds, the crop with which it is cultivated, the rate per bigha and the total annual rent of each ryots; fifth, Nakl-i-patta, a register of all pattas or grants by which the ryots hold their lands; sixth, Kami-Beshi-dar-fardi, an abstract account of the increase or decrease in the Jama of each ryot; seventh, Hal Hakikat, an account specifying the asal jama of each ryot, the different abwabs, the increase or decrease in rent; eighth, Kistbandi or Mawari, an account of the monthly instalments by which the annual rent is to be paid; ninth, Taujih, an account exhibiting the kist or monthly instalment, the amount paid by the ryot etc.; tenth, Kharja an account current of each ryot; eleventh, Bara Thoka, an account at the end of six months or eight months wherein the putwaris insert the Jama and receipt until the date; twelfth, Akhiri Hissab Kharja, an adjustment of each ryot's account at the end of year, stating the Jama, receipts and balances for the year; thirteenth, Akhiri Jama Wassil Baki, an aggregate of the two former accounts, containing a state of the revenue of the whole village, distinguished into Jama, receipts and balances; fourteenth, Shomar, an account of the daily receipts; fifteenth, Seeah, an account similar to the Shomar but drawn afterwards from it with more regular arrangement; sixteenth, Pattan Jama Kharja, a monthly treasury account specifying the receipts and disbursements; seventeenth, Tirij Jama Kharja, an annual Treasury account from the Pattan Jama Kharja; eighteenth, Akhiri Nikas.

Abstracts of all these accounts or adjustments are kept by the officers in the tarafs or parganas and transmitted to the Sadar Cutchery of the Zemindar which being collected into one state, exhibits the rents, the payments and the balances of the district.

At the commencement of the year, the Zemindar draws an account, called the Daul Bandobast, containing the rent-

roll of the Zemindari, which is formed by adding together the rent of each Mazkuri talukdar, the sum which each Katkinadar has agreed to give for his farm, and the estimated revenue of such parts of the district which are to be collected by the immediate officers or agents of the Zemindar.

Two hereditary Kanungos were appointed by the Emperor to preserve and correct the valuation, as standardised since the time of Akbar: counterparts of all accounts were kept in their office as public records; their naibs or deputies were stationed in different parts of the country to mark the establishment of new villages, transfer of lands, and other circumstances occasioning a change in the state of the country; and every sale or deed of transfer, the measurement, the boundaries and divisions of land were registered by them with a minute exactness. Thus the whole mass of information about land revenue and other allied matters were possessed by the Government and the Zemindars were accordingly restrained from oppressions and exactions. Evils and abuses crept in when these instructions were neglected and Government were precluded from accurate knowledge of the state of the country.

The mode of assessment on an actual valuation fell into disuse, and the Government demand of revenue came to be fixed on a conjectural estimate of the capacity of the land—this was the beginning of exactions by the Zemindars. If the one section of ryots failed, the other section had to pay increased taxes: if a few ryots desert, the remaining ryots were proportionately taxed. The taxes were thus multiplied to a high degree and were raised under such a variety of names and pretences. This was a situation beyond the control of the Government. However, in 1771, the Bazi Jama was ordered by the Company to be abolished; in 1772, the Sair Chalanta was abolished and a new system was established. There were many collusive revenue-free grants, diminishing the public revenue. In the small district

of Mahomedshahi which paid only Rs. 2,90,000 to Government, no less than 1,61,000 bighas were exempted from taxation. In the 21 districts, there were 12,04,847 bighas of Chakeran lands, of which 10,61,130 bighas were exempt from taxation and 1,43,416 bighas were subject to a nominal tax (paying only Rs. 66,049).

The Company Administration

In 1765, the Company was granted Diwani. That was a period of chaos in Bengal. the imperial authority was weak; after the death of Nawab Alivardi Khan in 1756, the Niabat of Bengal, Bchar and Orissa was the cause of civil war. Mirjafar and a series of incompetent followers worsened the situation. The grant of Diwani to the Company might be taken to be a revert to the plan of Akbar who instituted the office of Dewan as the chief financial officer of the Subah of Bengal, to act as a useful counter-balance to the Nawab who was given military, police and criminal powers. Akbar's judicious plan of the separation of powers was frustrated because the Diwani, since the days of Murshid Quli Khan, was united to the Nizamat.

When the Company took over the charge of the Diwani, they continued the system inherited, they employed the native organisation, and the aid of the revenue officials, such as the Zemindars and the Kanungos, was thoroughly utilised. The Company even continued to collect the revenues by the same coercive means as were resorted to by the Mogul Government.

Since 1769, there began a series of attempts by the Company to obtain accurate information of the state of the country with a view to making a scientific settlement of the land revenue.

First, the letter of the Directors ordering an enquiry into the collection of the land revenue and the sending of three special commissioners, viz., Messrs. Henry Vansittart, Luke

Scrafton and Colonel Ford to carry out in Bengal a full enquiry as to the land-revenue.

Second, the appointment of the Supervisors, 1769. The Company's representatives in Bengal, the President and the Select Committee, felt the need for a scientific inquiry into the unsatisfactory state of the collections in Bengal. In their opinion, the following were the principal reasons of the unsatisfactory collections: (a) feeble central Government with its crowd of greedy Persian officers, (b) the ignorance of the produce and capacity of the country, (c) the numerous train of dependants and underlings whose demands are to be satisfied by the ryot, (d) the venality of the people in general, (e) the collusion between the zemindars and the tax-collectors, (f) the oppressions of traders, gomastas and petty agents on the ryots, (g) the over-centralisation of power in the hands of the Naib Nazim, (h) the binding orders of the Court of Directors.

To remedy this unsatisfactory state of the country, the Supervisors were appointed "in the hope that the collections, being placed in the hands of Englishmen who knew to some extent the country and the people, might be restored to a more healthy and less oppressive mode of administration." The experiment failed: they could not prepare the rent-roll and obtain facts because of opposition from Zemindars and Kanungos whose interests were to thwart the Supervisors' attempts to obtain accurate information about the state of the country. They failed through the conspiracy of circumstances, not through fault of their own.

Third, the Company's declaration to stand forth as Diwan, 1772. To execute the orders from the Directors at Home more scientifically, Mr. Warren Hastings and his Council appointed a Committee of Circuit, consisting of the Governor himself and Messrs. Samuel Middleton, P. R. Dacres, J. Lawrell and J. Graham to tour through the various

districts and to report on the results. The terms of reference were the following :

- (a) The lands to be farmed for five years.
- (b) A Committee of Circuit to visit the principal districts and form the settlement.
- (c) The Supervisors to be re-introduced under the name of "Collectors" assisted by a Diwan, a native official.
- (d) Officials and employees of the Company were to be restricted from any but official duties and were to receive no presents.

The Committee made two significant recommendations that (I) the revenue in all its branches should be put under the immediate control of the President and Council at the Presidency, with the definite object of making the administration simpler and of facilitating appeals from the cultivator, and that (II) the Khalsa must be removed from Murshidabad to Calcutta.

The Committee in the course of investigations made sincere efforts for remedying the unsatisfactory state in which the cultivators were placed. At the time of Mir Jafar, abwabs reached an intolerable point: the Company's officers felt it but the problem was how to ascertain the difference between the sum received as land revenue by Government and the amount actually paid by the ryot.¹ The last resource of the ryots was desertion, amounting to a strike in the modern sense, but that was not generally availed of, because famine forced the ryots² to take to hired labour, and

1. "The truth cannot be doubted that the poor and industrious tenant is taxed by his Zamindar or Collector for every extravagance."
—Verelst.

2. Syam Sunder Chatterjee, a revenue farmer, made a petition for remission of revenue, on the ground that "the distress of the ryots is so severe.....that those who remain are now searching for food by daily labour of the meanest kind."

the nature and tradition of the meek Asiatic ryots were against any such aggressive attitude. The problem was made all the more acute because even if there was remission of revenue granted, there was no knowing that a corresponding remission in the burden of the ryots would be effected: the whole fiscal organisation was so corrupt. It is held that the "taksis" method was sound, that is the method of assessing revenue from the bottom upwards by means of accurate measurement and a first-hand knowledge of the conditions of the cultivator. This method, though not unknown to Todar Mall, was scarcely employed: the method that was applied was the "taksim" one of assessing the revenue from the top downwards in a conjectural manner which was uneven in its effects. "The taksim method was the root of the revenue difficulties in Bengal." The accurate information of the abilities of the tenants which was the condition precedent to an equitable assessment could not be obtained. The Collector of Chittagong in a letter dated July 10, 1773, told the Government point blank that no measurement except under the Collector's eyes was of any value at all and the failure of the revenue collection was due to the fact that the Government had no knowledge of the actual collection from the ryots and by how much the actual collection exceeded the authorised collection.

The Committee evinced genuine anxiety for the protection and welfare of the ryots: they drew up a new form of lease or amulnama in which exactions were forbidden; they issued stringent instructions to the Company's Diwans against the oppression of the ryots by agents; they enquired into allegations of oppression by the Company's servants and agents; they recorded new plans for the administration of justice; they recorded that the Governor and Council should compose a Board of Revenue, assembling twice or oftener in the week; they recommended the centralisation of the revenue work in Calcutta with an elaborate

series of "daftars" or departments under the supervision of an Indian officer, called the "Roy Royan."¹

Miss Monckton Jones in her work on "Hastings in Bengal" gives a convenient summary of the resolutions of the Committee of Circuit :

- (a) Farms to be let on lease for five years.
- (b) Farms not to exceed the value of one lakh.
- (c) Supervisors to be known henceforth as Collectors.
- (d) A Diwan to be appointed who shall be joined with the Collector.
- (e) A public seal of the Company to be used with every transaction.
- (f) Sepoys not to be employed in the collections except in urgent cases and by warrant under the public seal.

1. The "Roy Royan" drew Rs. 5,000 as his monthly pay and was in particular responsible for checking the work and account of the Indian Diwans appointed to assist the Collectors and for seeing that the Board's orders were correctly transmitted to the Districts. The first Roy Royan was Maharaja Rajballabh. There were two other important offices in the Revenue Department: the realisation of payments made direct to the Khalsa (treasury office) was the work of a European officer of the Company, called the Superintendent of the Khalsa Records; another European officer was the Accountant General whose duty was to keep the general books of the revenue, to prepare monthly statements for the Board, and to receive the accounts submitted by the Collectors. The first Superintendent was the Hon'ble Alexander Elliot drawing Rs. 1,200/- as monthly salary, the first Accountant General was Mr. Charles Croftes. The Company's head clerks' monthly salary ranged from Rs. 100 to Rs. 500, the average clerks' monthly salary from Rs. 15 to Rs. 20, and the servants' monthly salary was Rs. 4, a cadre favourably comparing with the present one if the important fact is taken into account that the purchasing power of the rupee of to-day is less than $\frac{1}{4}$ th of the purchasing power of the rupee in 1773.

- (g) The rents of ryots to be fixed and not exceeded on pain of forfeiture of the farmer's lease.
- (h) The farmer's rents also to be fixed according to the rent-roll of the lease.
- (i) No mathots (i.e., additional cesses) to be permitted. The existing ones to be scrutinised by the collectors and abolished, if pernicious.
- (j) Nazars and salamis at first interviews to be discontinued.
- (k) The old farmers to settle the rents in the presence of the new farmer who is to be responsible for any outstanding balance.
- (l) A Mohurrir (accountant clerk) to be appointed to every farm to note receipt of rents and to send monthly accounts to the Collector at the District Sadar Cutchery.
- (m) Collectors forbidden to purchase grain on pain of dismissal.
- (n) No peshcar, banyan or other servant of a Collector is to farm any lands.
- (o) Collectors' banyans forbidden to lend money but farmers to continue the usual takavi (i.e., advance for seed and working necessities) to ryots.
- (p) Kists to be paid at the harvest times.
- (q) A list of assigned lands to Government servants to be made.
- (r) All Zamindari chaukis (toll bars) to be abolished.
- (s) All orders and changes to be advertised by the Board of Revenue.
- (t) Collectors to submit the rent-roll, of each farm

arranged in parganas, and the charges of the collection to be entered.

(u) Dacca District to be specially considered.¹

Fourth, the abolition of Collectors and the establishment of six divisions under the management of Provincial Councils, 1773.

The Court of Directors in 1773 sent instructions to the Governor-General to recall the English Collectors from the Districts. The Company's Board in Calcutta made out a compromise in the execution of the orders: they decided to preserve the existing collectorships with certain modifications, to appoint a Diwan to superintend each district (except those let to Zemindars or farmers), to form a Committee of revenue at the Presidency consisting of two members of the Board and three senior servants below Council which shall meet daily and transact the necessary business assisted by the Roy Royan and supervise and

1. Mr. R. B. Ramsbotham in his "Studies in the Land Revenue History of Bengal" considers the resolutions of the Committee as pious aspirations, as, in his opinion, No. B. was never put into force, No. D. divided authority and increased intrigue, No. F. was honoured not in its spirit, No. G. was nugatory, No. I was not enforced, No. L. introduced a fresh element of corruption, No. N. could not be enforced, No. O. could not be enforced. Thus the Committee of Circuit could not improve the methods of collecting the land revenue in Bengal and alleviate the unsatisfactory state of the country. According to Dr. Firminger, the revenue settlement by the Committee was a failure as the revenue demanded from the farmers was too high: this was done by farming out land to the highest bidders, instead of making arrangement with the existing zemindars who had the necessary knowledge and experience of acting as farmers. The real need was efficient district officers and a judicious decentralisation but the Committee of Circuit tackled the need by concentrating power at head quarter and by an efficient control of the Khalsa ignoring the fundamental idea that a just revenue system must rest first and foremost on the district officer, not on the Secretariat.

control the Diwan, and to select occasional commissioners or inspectors who have knowledge of Persian and moderation of temper. The Collectors were to be recalled as soon as they adjusted their accounts: the Board was to act as a General Court of Appeal to the ryot against Diwans, zemindars, farmers and other public officers of revenue; the three provinces were temporarily divided into six divisions (viz., Murshidabad, Calcutta, Dacca, Burdwan, Dinajpur, Patna) each under a Provincial Council consisting of one chief and four senior servants of the Company with a necessary staff.¹ The system of Collectorship established in 1772 was completely changed in 1774; this change was for worse: "it checked a growing public spirit among the younger officers of the Company, and definitely deprived the Company of that increasing knowledge of the state of the revenue and the methods of collecting it; it was a tacit announcement that the Company found the subject beyond their powers, and that, provided the stipulated sum was received, it did not matter how much was collected or the manner in which it was obtained. For this retrogressive step the Directors were primarily responsible."

Fifth, the Regulating Act of 1773 reorganising the Executive Government of the Company's dominions and establishing a Supreme Court of Judicature, 1774.

The Regulating Act reorganised the Executive Government of the Company's territories in India by forming a Supreme Council, consisting of a Governor-General and four

1. To guard against corruption and temptation, the staff of the Provincial Councils was given a decent salary: the Chief was given Rs. 3,000 as a monthly salary, while the 2nd, 3rd, 4th and 5th members received Rs. 600, Rs. 500, Rs. 400, and Rs. 400 respectively per month, and the secretaries, translators and accountants were given Rs. 100 each per mensem.

Councillors.¹ This Council was a Committee for the administration of the land revenue.² To quote Prof. Ramsay Muir, the Regulating Act of 1773 was a well-meant attempt to introduce a better system of Government but being designed in ignorance of the real nature of the problem it was a total failure.

The first constructive step of the new Government was the establishment of the post of Superintendent³ of the Khalsa Records whose main duty was to prepare parwanas from the Roy Royan to the Provincial Diwans, to prepare petitions to the Board, to make such enquiries as may be directed by the Board, and to keep complete records of the Khalsa.

The new Council proved to be a bed of dissenting views: this spirit of dissension travelled to Provincial Councils and other departments of the Government. But in such an atmosphere of discord and dissension the administration was made cleaner because every laxity was attempted to be exposed by the one party or the other.

Sixth, a circular letter of inquiry issued by the Council in Calcutta to the senior officers of the Company in Bengal, Bihar and Orissa calling for their opinion on the unsatisfactory state of the collections.

In response to the circular, various valuable informative reports reached the Board, reports from Mr. George Vansittart, (late Chief of the Burdwan Council), Mr. Samuel

1. Warren Hastings, the Governor, became the first Governor-General; the first Councillors were General Clavering, Colonel Monson, Messrs. R. Barwell and Philip Francis.

2. The Council also inherited the generic designation of the Board.

3. Mr. Elliot was appointed on Rs. 1,200 a month. This office was abolished in 1781.

Middleton (Chief of Murshidabad Division), Mr. P. R. Dacres, Mr. G. G. Ducarel, Mr. Hurst (Chief of the Patna Council), Mr. Harwood, (Chief of the Dinajpur Council) and Mr. N. Bateman (Chief of Chittagong). Mr. Vansittart advocating a long-period settlement of lands instead of on the 5 years basis, referred to high assessment; Mr. Middleton complained of arbitrary settlement by the Committee of Circuit; Mr. Dacres defending perpetual settlement with the Zemindars, criticised the policy of farming lands to the highest bidders; Mr. Ducarel believing in a Permanent Settlement with the landlords attributed the unhappy state of the country to a constant drain of money without proportionable returns; Mr. Hurst referred to the increase in the proportion fixed in the bandobast made by the Committee of Circuit; Mr. Harwood lamented the enormous increase in the rent; Mr. Bateman complained of the subterfuges of the principal Zemindars and Kanungos, and ignorance of the new Diwan.

Seventh, the establishment of the Amini office and the appointment of the Commission, 1776.

When the expiry of the lease of five years was approaching nearer, the question of a re-settlement was raised. Mr. Warren Hastings favoured a new commission to report on the actual state of the country which would form the basis of the new settlement. Mr. Francis considered another commission of enquiry unnecessary and wasteful and advocated a revenue system on a "fixed Jama". The Governor-General insisted on the establishment of a new commission of enquiry in scorn of stern opposition from General Clavering and Francis: he appointed a new commission in 1776, consisting of Messrs. Anderson, Bogle and Croftes, to collect necessary information about the state of the country.

After the quinquennial settlement, 1772-1777, there began again annual settlements: the management of the Zemindars over lands let in was not to be disturbed if they agreed to

pay the same rent as that of the preceding settlement and the Zemindars who were given lands without security were to be dispossessed only in the event of their failure to pay revenue; the lands under the charge of the naib diwans which could not be let in with Zemindars were to be advertised to be farmed for one year upon sufficient security to the highest bidders. There was further arrangement that the engagements were to be renewed year after year, if the Zemindars and farmers kept their terms all right. The annual settlement arrangement ran up till the period when in 1790, the Decennial Settlement was promulgated.

In 1781, the Provincial Councils were abolished and their functions were transferred to the Committee of Revenue in Calcutta together with the office of the Khalsa and the Kanungos were revived. A commission of two per cent was allowed to the Committee on the revenue realised. Interest at one per cent was to be charged on revenue remaining in arrears for more than 15 days.

Economic Drain

In 1757, the Company became virtual masters of Bengal after the battle of Palassy, but in 1765, they were given a legal status. Since then the economic drain of the country went on with vengeance which harshly told on the recuperative power of the people. The whole of Bengal was considered as a source of profit to the Company and the Company's land revenue administration was tainted by this governing principle. "The taxes raised from thirty millions of people were, after deduction of expenses and allowances, not to be spent in the country and for the benefit of the country but to be sent to England as profits of the Company. An annual remittance of over a million and a half sterling was to be made from a subject country to the shareholders in England." During the period from 1765 to 1771, one-third of the net revenues of Bengal (that is, £4,037,152 out of

gross collections of £20,133,579) was remitted out of Bengal. Through the ingenious policy of monopoly and coercion, the trade and industry of Bengal declined; the vast fortunes of those foreign traders who had deposed the country merchants from their legitimate trades and industries were annually sent out of India. The purchasing power of the people declined ruinously, the land tax was rigorously collected which might give dividends to the shareholders in England. Notwithstanding the great famine of 1770, the net collections of 1771 exceeded even those of 1768. Land revenue was violently kept up for the profit of the Company at the cost of the people of Bengal, a fact which was responsible for the dismal failure of the various land-settlements experimented during the period from 1765 to 1784. Throughout the administration of Lord Clive, of Verelst, of Cartier and of Warren Hastings, land revenue was exacted with the utmost rigour to meet the Company's demands: their fiscal policy was to drain the resources of the country.¹ Thus the country was impoverished, its resources crippled.

Sir John Shore referring to the annual economic drain pointedly said: "The Company are merchants as well as sovereigns of the country. In the former capacity they engross its trade, whilst in the latter they appropriate the revenues. The remittances to Europe of revenue are made in the commodities of the country which are purchased by them."

The internal trade of the country, as carried on between Bengal and the upper parts of Hindusthan, the Gulf of Moro, the Persian Gulf and the Malabar Coast, was considerable. But it declined after 1765. To cry halt to this policy of naked exploitation, Pitt's India Bill was passed in 1784. The

1. "Every rupee of profit made by an Englishman is lost for ever to India"—Burke in his speech on Fox's East India Bill.

object was the better governance of India by placing the administration of the Company under the control of the Crown.

Character of the Company's Administration

The Company's land revenue administration from 1765 to 1784, a period of about 20 years, was characterised by no planned policy, except that of screwing the maximum amount possible under the circumstances. It was only in pursuance of Pitt's India Act of 1784 that a definite land-revenue policy was planned and adopted for the better governance and humane administration of the country. It was Lord Clive who left things to shape out for themselves, he wanted the revenue but did not disturb the existing collection machinery. His was a policy of hesitation and Kaye characterised his policy as an attempt on the part of the Company to "gorge themselves on the revenue, leaving the responsibility." Perhaps, that was an unkind comment: the Subhadari staff was not disturbed possibly in a genuine belief that the native rule was most expedient and politic. That was a period when the Company had a small staff of merchants and writers and they were unequal to the task of civil administration. Lord Clive selected Mahamad Reza Khan to collect the revenue on account of the Company with the title of "Naib Diwan" or Deputy Finance Minister. According to Grant, a large part of the profits of the Company passed into the hands of the "Naib Diwan" and his subordinates. That may be an exaggeration but the system, recommended by Lord Clive, did not work well. And in 1769, Supervisors were appointed to superintend the collection of revenue by the Bengali officers of the former regime. That was a mere patch-work and it failed. If the local agency was corrupt, the Supervisors were powerless: they could not, as instructed, prepare the rent roll. The corrupt land revenue administration went on: there were exactions by the local agents and losses on the part of the Company.

In 1772, the Company declared their intention to stand forth as Diwan. Thus the mask was thrown off and the Company intended to collect their own revenue and to administer the fiscal system themselves. It was a pious resolve but the Company's strength was unequal to the task. The fiscal organisation was centralised with a Committee of Revenue constituted at Calcutta, maffasal Kanungos and Collectors abolished. No new land-revenue policy was initiated and the quinquennial settlement was made with the farmers offering the highest bid. That was the most impolitic move, though larger revenues could be thereby screwed. Estates were knocked down to speculators and they, without knowing the capacities of the soil, offered their terms with the result that extortions went on unimpeded and arrears heaped up in large numbers.¹ This policy of farming out lands to the highest bidders was disastrous. The policy of Warren Hastings was not suited to the land, "old zemindars, if they failed to compete with the auction bidders, were turned out from estates which their fathers had held for generations." If they kept their estates as farmers at an enhanced revenue and failed in prompt payment, managers were forced on their estates, and they plundered the tillers of the soil and caused misery and depopulation. The land revenues failed in spite of the utmost coercion, one-third of the cultivated lands in Bengal was overgrown with jungles.

Dinajpur in 1780 with its revenue of over £140,000 was held by the Raja's widow who acted as the guardian of the heir, only 5 years old. Debi Singh, an unscrupulous and rapacious agent, was appointed from Calcutta to manage the estate with the evident object of screwing up the revenues. His oppressions are well-known.

1. The quinquennial settlement of the Dacca Province amounted to Rs. 38,00,000 against 19½ lakhs in 1772, but the arrears averaged over Rs. 8,00,000 per annum.

Burdwan with a revenue of over £350,000 was held by the Rani, widow of Maharaja Tilakchand, having a minor son Tejchand. Brij Kishore, an unscrupulous manager, was forced on the Rani. Brij Kishore wasted the wealth of the estate.

Rajshahi with a revenue of over £260,000 was held by Rani Bhavani. Dulal Roy was employed as a farmer of Rajshahi. The oppressions of Dulal Roy are recorded in the petition of Rani Bhabani.

After the quinquennial settlement, there began again annual settlements which were highly prejudicial to the agricultural prosperity of the country. The fiscal organisation was completely centralised, when the situation needed complete decentralisation. Collectors were re-appointed but they were not trusted and as such they were denied any interference with the new settlement of revenue. Maffassal Kanungos were re-appointed but they were placed under the control of Sadar Kanungos who were under direct control of the Committee of Revenue. Thus ignorance of the local conditions and distrust of their own officers were responsible for the failure of the administration. The evils of annual settlement were apparent but the lack of foresight could not bring about any new policy. The main evils of the annual settlement are: (a) the farmer having no interest in the next year takes what he can with the hand of rigour, (b) a farmer is under the necessity of being rigid and cruel, because what is left in arrear is at best a doubtful debt, (c) the cultivation is injured; some of the richest articles of tillage require a length of time to come to perfection; ground must be manured, banked, watered, ploughed and sowed or planted, these operations cost heavy expense—in an annual settlement, no farmer would go in for such costly operations and would evince no interest in the preservation of the quality of the soil.

In 1784, Pitt's India Act was passed by the Houses of Parliament "to settle and establish the permanent rules by which the tributes, rents and services of the rajahs, zamindars, polygars, talukdars and other native landholders should be in future rendered and paid." Accordingly, a definite plan was resorted to for the reforms of the land revenue administration. It was a scheme of complete decentralisation: the provinces were divided into districts, each under the control of the Collector. The Collector made the settlement and collected all the revenues of the district; the Committee of Revenue had a general power of sanction and control; the native diwans were abolished; the Kanungo was revived and reorganised. The new districts were territorial units, thirty-five in number, the revenue of each of which amounted approximately to eight lakhs of rупpes.¹ "The division of the province into districts is the backbone of the whole system of reforms. The Supervisors, the Provincial Councils, and the earlier Collectors had exercised their doubtful authority over a series of fiscal divisions.....The creation of districts as territorial units was in fact a revival of Akbar's system of Sarkars."² The local administration was made strong by strengthening the position of Collectors who were vested with the responsibilities of fair assessment and full collection of revenue. The Board of Revenue, now created out of the Committee of Revenue, did neither suspect nor distrust the Collectors.

The reforms of 1786 laid the foundations of the Permanent Settlement. The Court of Directors in England in 1786 felt that the spirit of the Regulating Act of 1784 could be best observed by fixing a permanent revenue on a review of the assessment and actual collections of former years. They

1. In accordance with a minute of Shore, dated March 13, 1787, these districts were reduced to twenty-three in number.

2. Ascoli's Early Revenue History of Bengal, P. 39.

enunciated the principle that a moderate Jumma "if regularly and punctually collected, unites the consideration of their interest, with the happiness of the natives and security of the landholders, more rationally than any imperfect collection of an exaggerated jumma, to be enforced with severity and exaction." This policy was a welcome departure from the one followed so long from 1765 onward. For the last twenty years, there was no definite policy, the object being the collection of the maximum amount of revenue. But it was left for Lord Cornwallis to give a new tone to the administration: there was the definite policy of introducing humane principles in the administration and collection of revenue with no hunger for the maximum revenue. It was a policy for the contentment of the subjects, for the security of revenue and for bringing about the development of the country.

Revenue-Free Lands

When the Company took charge of the finances of Bengal, Behar and Orissa as the Diwan of the Great Moghul, they found considerable portions of land assigned and occupied free of revenue; it was a distinct loss to the public exchequer. The Company started with the theory as having absolute dominion over the soil, so they could claim assessment of every inch of land in the country; the Company were rather lenient in their attitude. They frankly recognised the grants, made before the 12th of August, 1765.

Revenue-free grants are not novel features in the land system of India. Manu advocated revenue-free grants of lands to the Brahmins learned in the Vedas; Vishnu also complimented such system, as the tax paid by those Brahmins was in the form of their service and prayer for the welfare of the king and the community. It is a case of fictitious payment of revenue, but at a later time, Vrihaspati and Yajnavalkya referred to gifts of land, free of revenue even

in a fictitious way, to the pious and learned Brahmins for their maintenance. The grant was a pious act of the king enjoined to be respected by future kings. There were also revenue-free grants for the performance and continuance of the worship of Hindu Gods.

During the Mahomedan period there were also revenue-free grants for religious and charitable purposes, known as Wuqfs; grants to military officers and servants of the State, known as Jaigirs; there were various kinds of revenue-free grants such as Altamgha (hereditary royal grants), Aymas (grants to imans), Madadmash (inalienable grants for religious purposes), Seyurghal (grants to learned men, colleges or Fakirs), Nazarat (grants for performance of services and other religious purposes at musjids) etc. In that period, there were attempts at both scientific and harsh assessment of land: there were attempts by the Sovereign to have increased revenue at all cost, but no serious attempt was recorded for the resumption of revenue-free grants of land. Thus when the Company stepped in as Diwan, a vast portion of land was precluded from assessment for State purposes, a position thoroughly uncomfortable especially when the need for the increase of land revenue, practically the only important source of public income, was being sharply felt. They did not disturb the grants, first, from principles of humane administration, secondly, that was a period when there was competition for cultivators and no competition among cultivators for land and necessarily the need for disturbing the alienations of land was not strongly felt.

It was also clear to the Company that there were fraudulent and forged grants which were possible through the machinations of the Zemindars and the lack of information of the state of the country for the Government. The Company needed money and they tried to check further alienations of land. Feeble attempts were made in 1771 but

the first serious attempt was made in 1782 by Warren Hastings and Resumption Regulations were passed. These Resumption Regulations were with certain modifications reproduced in Regulations XIX and XXXVII of 1793. They proved ineffective; for successful execution of the object, Regulation II of 1819 was passed. In furtherance of the same object, Regulations IX and XIV of 1825 and III of 1828 were passed.

The Regulations of 1793 made, rather preserved, the distinction between badshahi¹ and non-badshahi grants. They provided that all grants of land, whether badshahi or not, made by whatever authority, for holding land exempt from revenue previous to the 12th August, 1765, were declared to be valid, provided the grantee or his heirs had obtained *bona fide* possession previous to that date, and provided that the grants were made in perpetuity. As regards non-badshahi grants, the Regulations of 1793 made the following provisions: all revenue-free grants made since the 12th August, 1765, not confirmed by Government, are invalid; lands exceeding 100 bighas granted previous to the 1st December, 1790, are to be resumed and assessed by Government but granted after 1st December, 1790 are to be resumed and assessed by the proprietors of estates; lands in excess of 100 bighas, granted after the 12th August, 1765 and previous to the 12th April, 1771 in Bengal, are to be assessed with revenue, *nisf jama*,² by the Government, the grantee being entitled to possession but the lands granted between

1. Badshahi grants are grants made by the Mahammadan Emperors. The burden of proof of badshahi grants was on those who set them up. Regulation XIV of 1825 enacted that uninterrupted possession, exempt from assessment from the date of the Diwani in Bengal, would be sufficient to prove Lakhiraj title.

2. Revenue equal to one-half of the produce of the land according to pergannah rate and the taluk thus formed would be independent taluk.

12th April, 1771 and 1st December 1790 are to be assessed as ordinary revenue-paying lands; land not exceeding one hundred bighas but exceeding 10 bighas alienated by a grant declared invalid was to form a part of the estate within the ambit of which the land was situated;¹ land not exceeding 10 bighas was not to be assessed (if the sanad of grant bore a date between 12th August 1765 and 12th April, 1771) if the produce was *bona fide* appropriated as an endowment on temples or to the maintenance of Brahmins or other religious purposes; lands held under grants subsequent to 1771 are to be assessed in the same way as lands exceeding 10 bighas.

It must be mentioned in this connection that grants of land made since 1790 are really rent-free, not revenue-free. Therefore, the lakhiraj holdings i.e., rent-free lands, are resumable by a purchaser on sale of an estate or tenure free of incumbrances; the relation between the grantor and the grantee is that of landlord and tenant; it should not be confused with really niskar, revenue-free, lands.

In 1782, a plan was adopted for the establishment of a bazee-zemeen dufter for Bengal in which all revenue-free lands were to be registered. The Regulations of 1793 declared that grantees of lakhiraj lands, badshahi or otherwise, "should within one year of issuing notifications inviting registration, put forward their claims in written applications." Notices were not issued in all districts, so in 1800, a further Regulation was passed making stringent provisions for the issuing of notice. Notices were issued and notices for claims were kept. Registers of valid lakhiraj lands, admitted as such after judicial enquiry, used

1. This was a favour shown by Government without its right being prejudiced in any way.

to be kept in the Collectorate and were called (c) registers. Under the Bengal Land Registration Act, provision is made for the special registers of revenue-free lands.¹

1. Register (B) is the general register of revenue-free lands and Part I contains entries of all revenue-free lands held in perpetuity under various grants, declared valid by competent authority according to the Resumption Regulations.

CHAPTER II.

DECENNIAL AND PERMANENT SETTLEMENTS

The growth of the idea of a settlement with the Zemindars on the basis of unalterable fixed Jumma is extremely interesting; it shows the recognition of the force of circumstances. The quinquennial settlement of Warren Hastings was a failure; the wisdom of a settlement with Zemindars was being slowly felt. The Zemindars existed in Bengal with certain definite rights; their organisation, as we have gathered from the Amini Report, spread far deep into the roots of the village. An inquiry into the remotest villages could not be possible without the aid of the Zemindars. The Kanungo was an official shadow and the Patwaris were the bond slaves of the Zemindars. Their importance in the fiscal organisation was felt by the Company's civil servants before the eighties of the eighteenth century. It was further felt by them that the term of lease should be sufficiently long to give the Zemindars a sense of security.

Mr. George Vansittart, late Chief of the Burdwan Council, wrote on the 27th of January, 1775: "I look upon a settlement with the Zamindars themselves to be on many accounts the most advisable particularly in consideration of the security arising from the power which the Government possesses of selling their lands to make good their balances.The letting out the country on fixed and easy leases for life would probably be very useful." Mr. Vansittart thus definitely favoured a settlement with the Zamindars at a fixed rent for life and that fixed rent should be a low one.

Mr. Samuel Middleton who was in charge of Murshidabad division wrote on the 7th of April, 1775:—"The Zamindar can be viewed as the properest and the

only person to whom Government can, consistently with the welfare of the country, let the lands." He voted against the fixation of arbitrary rent.

Mr. P. R. Dacres, a member of the Committee of Circuit, wrote on the 10th of February, 1775: "Let a settlement be then made with the Zamindars, fixing the rent to perpetuity, and trust to a sale of their property as security of their payments."

Mr. G. G. Ducarel giving evidence before the Board in 1775 said: "There are some parganas where the Zamindars are capable and have such a natural interest with their tenants that it would be most advantageous to make the settlement with them on a long lease."

Mr. Harwood, Chief of the Provincial Council of Dinajpur, reported on the 7th of June, 1775, that the collection of revenues by Zilladars, instead of by Zamindars, had been extremely prejudicial to the prosperity of the province.

Mr. Philip Francis, obviously influenced by the statements of Messrs. Dacres and Ducarel, in a Minute of 1776 advocating a settlement with the Zamindars wrote: "The Jumma once fixed must be a matter of public record. It must be permanent and unalterable; the people must, if possible, be convinced that it is so.....If there be any hidden wealth still existing, it will then be brought forth and employed in improving the land, because the proprietor will be satisfied that he is labouring for himself."

On the 16th July, 1777, General Clavering and Mr. Francis, members of the Board of the Governor-General, submitted: "We are of opinion that the lands should be restored to the Zamindars, whose unalienable property they are, upon a reasonable Jama."

Mr. Law, Collector of Bihar, advocated a settlement with the Zamindars and wrote : "Every man will lay out money in permanent structures, as such works enhance the value of his estate and promise future benefit. If a scarcity happens, the landholders will forego demands and encourage cultivation to preserve their tenants who become a part of their necessary property."

Mr. Brook of Shahabad also favoured a settlement with the Zamindars.

Mr. Shore advocating a settlement with the Zamindars said : "The tax which each individual is bound to pay ought to be certain, not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor and every other person.The settlement is to be made for a period of ten years certain but with a view to permanency. . . . Revenue belongs to the King, soil belongs to the landlord."

The Home authorities in a letter dated the 12th of April, 1786, which Lord Cornwallis brought with him favoured a settlement with the Zamindars and directed that the most likely means of avoiding defalcations would be to introduce a Permanent Settlement of the land revenue, estimated on reasonable principles, for the due payment of which the hereditary tenure of the possessor would be the best and the only necessary security.

Thus we find that the Permanent Settlement with the Zamindars was the work of the Company's Civil Servants : it was in effect recommended by the men on the spot and the recommendation was sanctioned by the Board of Directors in England. Lord Cornwallis only carried out the charge which he was entrusted to do. The Permanent Settlement was not Lord Cornwallis' idea, it may be at most

his gift: his role was like that of the executor of a trust deed. But in the work of execution, he exhibited statesman-like foresight. He was intent on giving a new character to the British administration.

Before the Permanent Settlement was introduced, the question was debated at great length. The controversies between Grant and Shore, and between Shore and Cornwallis did go a long way towards explaining the pros and cons of the Permanent Settlement. It would be profitable if we recite here the standpoints which these estimable gentlemen, viz., Grant, Shore and Cornwallis, took with regard to the question of a permanent settlement with the Zamindars.

Grant's Case

Mr. Grant had definite views with the question at issue: his opinions are summarised below:—

- (a) The Zamindar was merely a temporary official: the right of property in land was vested absolutely in the State. This interpretation was adopted by the Committee of Revenue in 1786.
- (b) The Zamindar had no permanent right either as proprietor of the soil, or as an official who collected and paid the rent.
- (c) The land revenue administration from 1765 to 1786 had been a failure owing to the chicanery that had been practised in order to keep the officers of the Company in a state of complete ignorance. The defalcation subsequent to 1765, during the period of 20 years, amounted to 10 crores of rupees, or on an average of 50 lakhs per annum.
- (d) The Company continued the Moghul system of assessment. The State is entitled to the value of

one-quarter of the produce of soil: of this quarter the Zamindars should be entitled to one-tenth to cover their profits and cultivation. The later Moghul method of assessing each Zamindary by a consolidated abwab which must be unequal in its distribution was not approved.

- (e) The total area of Bengal was 90,000 sq. miles; of this one-fifth is hill and jungle, one-fifth covered by water, roads and towns, and one-fifth under cultivation. The value of gross produce of one bigha of land was Rs. 6; calculating rent at one-fourth of the gross produce, the total rental of Bengal would amount to Rs. 5,22,72,000 and the revenue deducting the one-tenth to the Zamindars, to Rs. 470,44,800. In 1786, Bengal was capable of paying higher revenue than she was actually paying.
- (f) Abwabs were unconstitutional but not oppressive as they were founded on the extension of cultivation and alteration in the value of money, due to the influx of silver on account of trade.
- (g) The settlement should be made of the Diwani lands at the full assets of the year 1765, as given by him i.e., the highest Moghul assessment. The ceded lands should be settled after a regular assessment on detailed measurement.
- (h) All lands held illegally free of rent or revenue must be resumed.
- (i) The Company's knowledge of revenue administration was not sufficient to justify a permanent settlement of the land revenue.

Some of the arguments of Mr. Grant are open to serious criticism. First, it is historically false that the Zamindars

had no right to the soil: they may or may not be absolute owners but certainly they had rights which were recognised by the Hindu and Mahomedan systems of Jurisprudence. Secondly, the Zamindary office in the Moghul period was permanent and hereditary, removable only by force or fraud. Ascoli in his "Early Revenue History of Bengal" says: "I have examined a sanad of the year 1728 A.D. in which the right of the dispossessed Zamindar to receive an allowance from his estate is distinctly recognised." Thirdly, Mr. Grant's attempt to show that the assessment in the Moghul period was a practical figure capable of realisation is one of his weakest features: it is improbable that the abwabs levied were collected or remitted to Delhi. Fourthly, in his statistical calculation, Grant has assumed the value of the gross produce of one bigha of land at Rs. 6, it was an extremely high estimate. Grant further said that one-fifth of the total area of Bengal was covered with jungles and hills, whereas Lord Cornwallis complained that one-third area of Hindusthan was covered with jungles. Fifthly, Grant's standpoint that abwabs were not excessive is extremely shaky inasmuch as the extension of cultivation, increase of the value of money and of the productive capacities of the soil are assumptions which would require much ingenuity to prove. Moreover, the economic drain which went on unimpeded from 1765 to the period when Grant wrote his treatise exhausted the recuperative powers of the country. Philip Francis and other civil servants of the Company maintained that Bengal was over-assessed.

Shore's Case

John Shore had a different case to present. Shore was a more experienced man than Grant: he was connected with the Bengal administration from 1769 to 1789. Shore's standpoints are given below:—

- (a) He abandons Grant's proposal that the highest Moghul assessment should be adopted as the standard.
- (b) He abandons as impracticable that one-fourth of the gross produce should form the basis of the revenue, a point laboriously stressed by Grant.
- (c) The revenue demand during the Moghul period increased alarmingly: from 1582 to 1722 it increased by Rs. 24,18,298; from 1722 to 1765 Rs. 1,16,20,989 had been added to the revenue demand. In the former period the annual increase averaged Rs. 17,273; in the latter period it had risen to Rs. 2,83,439.
- (d) The Moghul assessment from 1756 to 1765 was excessive and unrealisable

Year.	Administrator.	Assessment.	Collections.
		Rs.	Rs.
1762-63	Kasim Ali Khan	2,41,00,000	65,00,000
1763-64	Nanda Kumar	1,77,00,000	77,00,000
1764-65	Nanda Kumar	1,77,00,000	82,00,000
1765-66	Mahammad Reza Khan	1,60,00,000	1,47,00,000

- (e) Abwabs were unconstitutional, and oppressive and founded on enhancement of rate.
- (f) Shore calculated the gross-produce of Bengal at Rs. 8,51,27,826. Calculating revenue at one-quarter of this amount, the total revenue of Bengal would be Rs. 2,13,00,000.
- (g) Though admitting the necessity for detailed knowledge, Shore said that it was difficult to gather the information on the proportion of rent actually paid, compared with the gross produce and the

actual collection and payments by zamindars and farmers.

- (h) Of the three methods of settlement, viz., a settlement with the cultivators, a settlement with the farmers and a settlement with the Zamindars, Shore voted in favour of a settlement with the Zamindars. In his considered opinion, a settlement with the cultivators was useless because in that case the degree of knowledge necessary for revenue purposes could not be obtained; a settlement with the farmers was prejudicial because a temporary farmer would not look to the improvement of estates; a settlement with the Zamindars was inevitable and helpful because the Zamindars had a statutory right as proprietors of the soil and they might act as officials for securing the peace and for prevention of oppression.
- (i) In his opinion, rent belonged to the Sovereign and land to the Zamindars; the ryots also possessed certain definite rights and the necessity of legislation to safe-guard their interests was recognised.
- (j) He favoured a settlement for a period of 10 years with a view to obtain necessary knowledge on matters of revenue; he was not against permanent fixation of revenue after necessary knowledge had been obtained and an accurate assessment could be made.

Grant and Shore differed on fundamental points:—

- (a) Grant held that the Zamindars had no right whereas Shore repeatedly pointed out the definite rights of the landholders in the soil.
- (b) Grant held that the Moghul assessment was not excessive and it was realised, but Shore was of

opinion that the Moghul assessment was unrealisable and excessive and that it should not be adopted as the standard.

- (c) In calculating the value of the gross produce of Bengal, Grant and Shore did not agree. In other statistical calculations of Moghul assessment, their figures were at variance with each other.
- (d) According to Shore, abwabs were unconstitutional and oppressive but according to Grant, abwabs were unconstitutional but not oppressive. Both had different notions about the productive capacities of the soil.

But Grant and Shore agreed on one essential point: both were convinced that the Company's knowledge of revenue administration was not sufficient to justify a Permanent Settlement of the land revenue.

The Shore-Cornwallis Controversy

Shore in his first Minute of September 18, 1789, advocated a ten-year settlement with the Zamindars, otherwise a permanent settlement would tend to perpetuate abuses. "To those who have existed on annual expedients, a period of ten years is a term nearly equal in estimate to perpetuity." Cornwallis replying in a Minute of the same date criticised Shore on the following grounds:—

- (a) The Court of Directors wanted a Permanent Settlement and he had been sent with specific instructions for the consummation of the ideal.
- (b) A ten years' lease would be equivalent to farming and it would not ensure clearing of jungles (estimated at one-third of the total area).

- (c) On the point of experience which Shore boastingly insisted, Cornwallis replied—"What is experience that is still wanting, what further experience will be gained in 10 years."

Cornwallis also wanted the best men to be settled with and he considered the Zamindars as the best men for the purpose of settlement. To quote Cornwallis, "it is immaterial to Government what individual possesses the land, provided he cultivates it, protects the ryots and pays the public revenue." Both Shore and Cornwallis agreed that failure to pay revenue should lead to immediate sale of the defaulting estate: thus the prudent and clever would win, and the indolent and the worthless would break under the weight of punctual payment.

Shore in his second Minute of September 18, 1789, replied suggesting,

- (a) that a ten years' term would not endanger the spirit of confidence,
- (b) that the Zamindars would not offer a larger revenue for perpetual settlement than in the case of a decennial one,
- (c) that cultivation would extend even without a perpetual arrangement, and in order to ensure the clearing of jungles, definite conditions might be inserted in the lease,
- (d) that it would be wise to note the effects of the 10 years' lease before going in for a permanent settlement.

Shore in a further Minute of December 21, 1789 held that the Permanent Settlement would result in an unfair distribution of the assessment in the absence of a survey of

boundaries and of ascertainment of areas and profits, and that in the event of treating the Zamindars as proprietors in a permanent settlement, Government would not be justified in interfering¹ in the relations between zamindars and cultivators, the necessity of which was felt by Shore.

Cornwallis in reply to Shore in a Minute of February 3, 1790 held that the Permanent Settlement of land revenue would safe-guard Government revenue against drought and famine, that the disappearance of bad landlords would be a gain to the country, and that the Government would not forfeit the right to protect the ryots in the event of the promulgation of the fixation of Jumma in perpetuity.

On February 10, 1790, the rules for the Decennial Settlement of Bengal were issued and on March 22, 1793, in accordance with orders from the Court of Directors in England, despatched on September 19, 1792, the Decennial Settlement was declared to be permanent. The Decennial Settlement was practically formed on the basis of the recommendations of Shore: the Settlement in effect bore the impress of his constructive statesmanship. The Decennial Settlement Regulations were amended by the subsequent supplementary Regulations: Regulation of 11th June, 1790, prevented the Zamindars from the collection of sayer; Lakhiraj Regulations were passed on the 1st December, 1790; Regulation of 15th July 1791 declared females, minors, idiots, lunatics, contumacious persons, notoriously profligate persons who are proprietors of estates as dis-

1. "The interference though so much modified is in fact an invasion of proprietary right and an assumption of the character of landlord which belongs to the Zamindar; for it is equally a contradiction in terms to say that the property in the soil is vested in the Zamindar and that we have a right to regulate the terms by which he is to let his lands to ryots, as it is to connect that avowal with discretionary and arbitrary claims"—Mr. Shore.

qualified proprietors; the Board of Revenue was constituted as a Court of Wards to superintend the estates, disqualified landholder being entitled to 10 p.c. of the revenue for his support; Regulation of 12th August, 1791, recited that no naib, gomastha or other agent or servant of any zamindar, talukdar or farmer should be confined for arrears of rent or revenue unless they were personally responsible for such arrears. The amended Regulations for the Decennial Settlement were passed on the 23rd November, 1791.

The Decennial Settlement was declared as a prologue to the Permanent Settlement. Lord Cornwallis did not fail to notify that subject to the approval of the Directors in England, the Decennial Settlement would be made perpetual. And in 1793, the Permanent Settlement Regulation I was passed. In the Proclamation of 1793, the Governor-General-in-Council notified to "all zamindars, independent talukdars and actual proprietors of land paying revenue to Government," that they and their heirs and lawful successors would be allowed to hold their estates at the assessment which had been made fixed and irrevocable and would not be liable to alteration by future administrations; those whose lands were held in Khas in consequence of their refusing to pay the assessment required of them would be restored to the management of their lands upon their agreeing to the assessment which would remain fixed for ever; lands let in farm would be restored on the expiration of the lease on the basis of unalterable Jumma; Khas lands being transferred to individuals would be done so on the terms of the Proclamation. The Proclamation stressed punctual payment of revenue, voted against suspension of revenue on account of drought, inundation or other calamity of the season, definitely provided for sale of the whole or a sufficient portion of the defaulter's land in liquidation of revenue which would be counted as an arrear after a certain date and exhorted the proprietors to conduct themselves with

good faith and moderation towards their ryots and dependent talukdars and to exert themselves in the cultivation of lands "under the certainty that they will enjoy exclusively the fruits of their own good management and industry." The Proclamation reserved the right to the ruling power for the protection and welfare of the dependent talukdars, ryots and other cultivators of the soil and also the right to assess lands alienated and paying no public revenue which had been or might be proved to be held under illegal or invalid titles, the amount of such assessment belonging to Government. The Proclamation also recited that the Jumma now declared fixed was entirely unconnected with, and exclusive of, any allowances made in the adjustment of the landholder's Jumma, as well as of the produce of any lands which the zamindars might have been permitted to appropriate for keeping up the police establishments; "the Governor-General in Council reserves the right to resume such allowances or produce, which will, however, when resumed, be specially appropriated to the purpose of keeping up the police, and will not be collected as part of the Jumma, but separately."¹ The Proclamation clearly stated that the proprietors of land with whom the settlement was made were privileged to transfer their proprietary rights by sale, gift or otherwise, as they thought fit, according to law, without the sanction of the Government and all private transfers and divisions must be notified to the Collector in order that the Jumma might be apportioned and the shares with their Jumma registered and separate engagements executed by the proprietors. Lands held khas on account of the proprietors not agreeing to the assessment proposed, if sold publicly in pursuance of a decree, should be disposed of on such assessment as the Governor-General in Council might think equitable; lands farmed, if sold publicly, would be held by purchaser at the rate of assessment which was being paid by the proprietor

1. Philips, p. 30.

for the remainder of the farming lease and after the expiration of the lease, the assessment would be fixed by the Governor-General in Council; if the lands were sold privately, the purchaser would be entitled to receive from Government, if the lands were held khas or from the farmer if let in farm, the *malikāna* to which the proprietor was entitled.

Within six short weeks from the date of the Proclamation on the 1st of May, 1793, forty-eight Regulations were passed by the Governor-General in Council, the first enacting into a Regulation the several articles of the Proclamation and the whole constituting a comprehensive code for the fiscal and judicial administration of Bengal. In the construction of all Regulations, the maxims¹ essentially English, were urged to be followed: (a) that one part of a Regulation is to be construed by another, so that the whole may stand, (b) that if a Regulation differs from a former Regulation, the new Regulation virtually repeals the old one so far as such difference extends, (c) that the rescission of a Regulation which rescinds another revives the original Regulation.

I have recited the fundamental provisions of the Regulations of Permanent Settlement to give the readers an estimate of the reforms brought about by Lord Cornwallis. We have seen that the Settlement was made with the zamindars, independent talukdars and other actual proprietors of the soil, and that the annual Jumma had been fixed irrevocably and in perpetuity. It would be interesting to note here that the talukdars who were considered as actual proprietors were the following:—

- (a) those who purchased their lands or obtained them by gift from the zamindar to whom they paid their rent or from his ancestors, subject to the payment of established Government dues,

- (b) those whose taluks were formed before the zamindar to whom they paid rent or his ancestors, succeeded to the zamindary,
- (c) those whose lands were never the property of the zamindar to whom they paid rent or of his ancestors,
- (d) those who held their taluks under a special grant from the Government,
- (e) those who succeeded to the taluks of the above kind by right of purchase, gift, or inheritance from the former proprietors.

The Permanent Settlement was concluded by Lord Cornwallis with the best of intentions; it is for us to see if the best of results have followed therefrom. Lord Cornwallis concluded the settlement with the Zamindars but it must be acknowledged in the interest of historical accuracy that the Permanent Settlement was not of the Zamindars' seeking. Lord Cornwallis had three alternatives before him : a settlement with the ryots, a settlement with the farmers and a settlement with the zamindars. A settlement with the ryots was financially an unsound proposition : the necessary quantum of revenue to be expected of a settlement could not be had from the ryots. It is true that the ryots had certain rights but those were vague. The ryots had no fiscal organisation and in the event of a settlement with the ryots, the Government had to maintain the fiscal organisation in all its minutest details, a situation extremely uncomfortable for the Company. The Company had not so many officers with requisite knowledge and capacities for the revenue administration of the country; moreover, they wanted an escape from revenue duties to other spheres. Thus a settlement with the ryots was politically unwise and financially unsound. A settlement with the farmers was ruled out; the country had bitter experiences of a settlement with the farmers during

the administration of Warren Hastings which was a dismal failure. The farmers were speculative gamblers who had no interest in the soil except in the amount of rent that could be squeezed out of them. They had no sympathies: they merely sucked the life-blood of the cultivators. It was evident from the beginning that a settlement with the zamindars was inevitable: it was necessary because from the revenue point of view, their aid was essential; it was just because they had definite rights, which could not be ignored except through fraud and injustice; it was politically expedient because the recognition of the rights of the zamindars brought about a sense of confidence in the Company's administration and it was financially a sound arrangement because the maximum amount of revenue was realised. It was the Administration that was in sore need of a settlement with the zamindars. The situation brought about by the Permanent Settlement was not an enviable one for the zamindars; there was exceptionally high assessment, nine-tenths of the rental belonging to the Government as revenue; the means adopted for the enforcement i.e., the law of sale, were extremely harsh. The Zamindars naturally were not enthusiastic over such a settlement and, in fact, after the Permanent Settlement, the condition of the Zamindars became deplorable.

Under the native Moghul rule, the realisation of arrear revenue was a long-drawn out process, which was often unsuccessful. The defaulters were liable to imprisonment, expulsion from the zamindary, confiscation of their estates; they were sometimes chastised with stripes and made to suffer torture; they were sometimes "compelled to choose either to be Musalmans or to suffer death"; there were on rare occasions sales, and in certain cases the temporary lease of the defaulting estate to others. The method was certainly stamped with Asiatic despotism, but the zamindars were never dispossessed. "The zamindars themselves

might come under the displeasure of the Government and experience its severities; but their families would still maintain the consideration due to their station in society with the chance of recovering, in more favourable terms, possession of their zamindaries. The policy of the Government was adverse to the dispossession of a zamindar who by means of his family connexions and cast, might return and disturb the possession of his successor. Hence it appears, that even in cases where the zamindar, from rebellion or other misconduct, was deemed deserving of death, the succession of a near relation or of an infant son, or of a widow placed under tutelage, was generally deemed preferable to the introduction of a stranger to the possession of the zamindary."¹ However arbitrary the method might have been for recovering arrears of revenue, the zamindars had the consolation that their line and rank would not be disturbed; it was a great relief with Indians. Even under the British administration down to the period of the Permanent Settlement, the arrears of revenue heaped up but it was not usual to resort to the sale of land for the recovery of arrears of revenue. They continued on the lines of the later Moghul Sovereigns. "From the Company's acquisition of the ceded lands (consisting of the 24-Perganas, the districts of Burdwan, Midnapore and Chittagong) comprehending, until the formation of the Permanent Settlement, a period of thirty years; and from the accession to the Diwany until the above-mentioned time, there had hardly an instance been found of the property in landed estates having changed hands, by cause of debts, either public or private; certainly of the large ones, none."²

The whole situation was reversed after the introduction of the Permanent Settlement. The Zamindars assessed at

1. Fifth Report from the Select Committee on the affairs of the East India Company.

2. Proceedings of the Board of Revenue in July, 1799.

nine-tenths of the rental were faced with a gloomy situation. The amount of land revenue obtained from the provinces of Bengal, Behar and Orissa for the year 1790-91 was Rs. 26,800,989. The amount was nearly double the assessment of Jaffer Khan and of Suja Khan in the early part of the 18th century; it was three times the collections of Maharaja Nandkumar in the last year of the rule of Mir Jafar (1764-65), and it was nearly double the collections made by Mahomed Reza Khan in the first year of the Company's Diwani (1765-66). The assessment was as heavy and severe as it could ever be. It was extremely difficult to satisfy the Government demand of land revenue and it became impossible to avoid dismemberment or dispossession of the zamindaries in the event of arrears which were inevitable. Since the Permanent Settlement, land revenue was to be certain, automatic and immediate: there was no possibility of remission and there was no possibility of avoiding the sunset law (i.e., the law of sale). The result crystallised in the shape of widespread defaults and large sales of the zamindaries. The estates began to change hands, a fact which should set at rest the speculation, if any, that the Permanent Settlement was brought about by the conspiracy of the zamindars. The landlords were never accustomed to such rigid enforcement of the law of sale. In the year 1796-97, the land advertised for sale comprehended a jumma of sicca rupees 28,70,061, the extent of land actually sold bore a jumma of sicca rupees 14,18,756 and the amount of the purchase money, sicca rupees 17,90,416. In 1797-98, the land advertised for sale was for sicca rupees 26,66,191, the quantity sold was for sicca rupees 22,74,076 and the purchase money sicca rupees 21,47,580. To take a particular district, the facts revealed were an eloquent testimony to the deplorable state of the zamindars. In 1797, the Dacca estates bearing a revenue of Rs. 8,57,355 or more than two-thirds of the revenue of the Dacca district were ordered for sale; in 1799 the arrears for the Dacca

district were Rs. 1,21,047, in 1801 Rs. 2,08,266 and in 1800, the revenue of the estates put up for sale amounted to Rs. 1,48,294.

Mr. J. Macneile in a Memorandum on the Revenue Administration of the Lower Provinces of Bengal said: "By the end of the century, (that is the eighteenth century) the greater portions of the estates of the Nadia, Rajshahi, Bishnupur and Dinajpur Rajas had been alienated. The Burdwan estate was seriously crippled, and the Birbhum Zamindari completely ruined. A host of smaller zamindaries shared the same fate. In fact, it is scarcely too much to say that within 10 years that immediately followed the Permanent Settlement, a complete revolution took place in the constitution and ownership of the estates which formed the subject of that settlement."¹ It would thus appear that great estates were threatened with dismemberment and ruin. The position of the zamindars brought about by the Settlement was really so difficult and delicate that there were no good bidders for the lands advertised for sale. The

1. What the immediate effect of the Settlement was can be best described in the words of Sir George Campbell who expressed himself in his Administration Report of Bengal for 1872-73 as follows:—

"There was widespread default in the payment of Government dues and extensive consequent sales of estate or parts of estate for recovery of arrears under the unbending system introduced in 1793. In 1796-97 lands bearing a total revenue of sikka rupees 14 18,756 were sold for arrears of revenue, and in 1797-98 the revenue of lands so sold amounted to sikka rupees 22,74,076. By the end of the century the greater portion of the estates of Nadia, Rajshahi, Bishnupur and Dinajpur Rajas had been alienated. The Burdwan Estate was seriously crippled; and the Birbhum Zemindari was completely ruined. A host of smaller zemindars shared the same fate. In fact, it is scarcely too much to say that within the ten years that immediately followed the Permanent Settlement, a complete revolution took place in the constitution and ownership of the estate which formed the subject of the Settlement."

Permanent Settlement was no temptation for the people to become landlords, whereas under the expedients of annual and quinquennial settlements that preceded the Permanent Settlement, bidders were found in large numbers. This method of immediate and invariable sale due to arrears in revenue which was admittedly exorbitant brought about confusion and the ruin of the old famous houses.

It is also to be noted that large arrears were not due to the fact that the landlords were incompetent in the realisation of their dues. Under the operation of the regulation for the distraint of the crop, the tenantry found it practicable to withhold payment of the rents, whereas the zamindars could not avoid payment of their dues to the State. The slow progress of suits against the defaulting tenants inconvenienced the zamindars in the payment of their dues, whereas the Government had summary and efficient methods for the satisfaction of its claims against the zamindars. The Collector of Burdwan on behalf of the Raja wrote to the Board of Revenue on the 9th January, 1794, that it was not possible for the Raja to discharge his engagements to Government with that punctuality which the Regulations required unless "he (Rajah) be armed with powers as prompt to enforce payment from his renters, as Government had been pleased to authorise the use of, in regard to its claims, on him." The Collector of Midnapore reported to the Government on the 12th of February, 1802 that in the opinion of the Zamindars, the custom of imprisoning for arrears of revenue was mild and indulgent and "that the system of sales and attachments which has been substituted for it has, in the course of a very few years, reduced most of the great zamindars in Bengal to distress and beggary, and produced a greater change in the landed property of Bengal than has perhaps ever happened in the same space of time, in any age or country, by the mere effect of internal regulations. . . . It was notorious that

many of them (the Zamindars) had large arrears of rent due to them which they were unable to recover, while Government were selling their lands for arrears of assessment. Farmers and intermediate tenants were till lately able to withhold their rents with impunity and to set the authority of their landlords at defiance. Landholders had no control over them, they could not proceed against them, except through the courts of justice and the ends of substantial justice were defeated by delays and cost of suit." The Fifth Report acknowledged that the great transfer of landed property by public sale and the dispossession of the zamindars was due to the "unavoidable consequences of defects in the public regulations combined with inequalities in the assessment, and with difficulties, obstructions and delays with which many nice distinctions and complex provisions of the new code of Regulations were brought into operation."

The Sale Law operated with the result that it reduced the size of the Zamindaries and subdivided them and that it diminished the revenue fixed in 1793, because (a) the sale price was generally less than the arrears, (b) in the absence of no bidders, many estates were settled at a lower revenue, (c) and in some instances, on default no lands could be found and the revenue was abated. Mr. Ascoli mentions that in Dacca the decrease in the first three years of the Settlement was about Rs. 20,000 or 1·66 per cent of the revenue demand. Defaults and sales with consequential decrease in revenue were so appalling that the Government thought about the redemption of land revenue; in 1802, the question was considered but was not of course adopted. It was only after 1819 that the tide of decrease was stemmed. The revenue began to increase, because the Zamindars had adjusted themselves to the situation and they had the haftam Regulation; the Administration was strong; lands held free of revenue were resumed; lands that had formed in the beds

of rivers after the Permanent Settlement were assessed; estates purchased at sales for arrears were in some cases remuneratively settled with; that Zamindars were relieved of the police charges and the lands held free for the purposes were assessed; according to Regulation II of 1819 lands held in excess of the proper estate were assessed. Various causes combined to bring about a definite increase in the land revenue and the profit of the landlord also leapt up: first, the nineteenth century was an age of plenty; secondly, the ryots took to cultivation more seriously; thirdly, culturable waste lands included in the estates which were unassessed were brought under cultivation.

We find that the Permanent Settlement was not a boon to the Zamindars; it was a necessity with the Government. In effecting the Permanent Settlement the Government tried to ensure the financial success of the development of the country. The perfection of the Administration was the need of the hour: the policy of economic drain that was pursued by the Company since their accession to diwani asphyxiated the internal trade of the country. Thus the definite objectives that were sought to be achieved by the administration of Lord Cornwallis were to place the revenue-paying agency on a definite footing and to expedite and assure the payment of revenue, to ensure a minimum revenue, to free the hands of officials for other spheres of administration and to promote the extension of cultivation. These objects were best secured by the Permanent Settlement. The creation of a prosperous middle class, the improvement of land and the growth of the sources of income, (which by the way, Baden Powell calls "prophetic arguments") were also the explicit purposes of the Permanent Settlement.

The Settlement freed the Central Government for its wars in Southern India and also helped the establish-

ment of the British Empire in India. It is an open historical fact that "in India an Empire had been acquired, wars had been waged, and the Administration had been carried on at the cost of the Indian people; the British Nation had not contributed a shilling. The trading Company which had acquired this Empire had also drawn their dividends and made their profits out of the revenues of the Empire for two generations. When they ceased to be traders in 1834, it was provided that the dividends on their stock should continue to be paid out of the taxes imposed on the Indian people. And when, finally, the Company ceased to exist in 1858, their stock was paid off by loans which were made into an Indian Debt. The Empire was thus transferred from the Company to the Crown, but the Indian people paid the purchase-money." If we examine the figures of the Indian revenue receipts and expenditure from 1793 to 1837, we find that Bengal with an increased, steady and unvarying income from the soil, due to the Permanent Settlement, paid the expenses of ambitious wars and annexations in Northern and Southern India; Madras and Bombay never paid the total cost of their own administration during these years; Great Britain never contributed anything towards the acquisition of India. During the administration of the Company land was the staple source of the income of the Government of Bengal and from 1795 to 1810, Bengal showed a definite surplus whereas Madras and Bombay showed deficits. Bengal contributed land revenue to the extent of more than 230 millions sterling during the years between 1793 and 1834 but Bombay and Madras together contributed only a little above 126 millions sterling. During the period, there were thirty years of surplus and fourteen years of deficit and the surplus amounted to nearly forty-nine millions and the deficit to seventeen millions—showing a net surplus of thirty-two millions sterling. This surplus which was devoted to the establishment of the Empire was possible because of the permanently settled province of Bengal. Accordingly, R.

C. Dutt remarked: "It may be said with strict truth that the conquests of Lord Hastings like the conquests of Lord Wellesley were made out of resources furnished by permanently-settled Bengal."

The Permanent Settlement created a class of people whose interests became indissolubly bound up with those of the Government. By spreading out a loyal class of people having influence and power, the solidarity and stability of the British Administration were strengthened. It would be interesting to note here that the Sepoy Mutiny in 1858 could not gather force in Bengal because of the Permanent Settlement which created a contented peasantry and a loyal landholding community; that was a proof positive of the extent of the stability of the British Government. It can be truthfully claimed that the Sepoy Mutiny could not catch conflagration in Bengal because there was a loyal powerful community, born of the Permanent Settlement, at the back of the Administration.

A vast literature has of late grown up in condemnation of the Permanent Settlement. It is urged that the Permanent Settlement was promulgated without adequate enquiry into the value of the estate or produce or rent and without proper survey of the boundaries. Local scrutinies were prohibited: tax was collected upon a conjectural valuation of the land with the result that the assessment¹ was uncertain.

1. That the assessment was largely based on guess-work is described by Mr. Thornton in an article reprinted in the *Calcutta Review* "The Collector sat in his office in the sudder (head-quarter) station, attended by his right-hand man, the *Kanungo*, by whom he was almost entirely guided. As each estate came up in succession, the brief record of former settlements was read and the *dehsunny* (*dah-san*, ten years) book, or fiscal register for ten years immediately preceding the cession or conquest was inspected. The *Kanungo* was then asked who was the *Zamindar* of the village * * * Then followed the deter-

The distribution of the assessment was also not fair: there were frauds here and there, and all the estates did not bear equal burden of the assessment. There were many lands included in the Settlement which were not assessed at all. The Settlement is open to some of the charges, but they could not be helped. We have seen that there have been series of attempts to obtain that information without which no just or efficient settlement of the land revenue could be made: in 1769 Supervisors were appointed, in 1772 the Committee of Circuit were appointed, in 1773 the three provinces were divided into six divisions each under a provincial council, in 1774 the Executive Government of the Company's dominions was reorganised, in 1774 opinions of the senior officers of the Company on the unsatisfactory state of the collections were obtained, in 1776 the Amini Commission were appointed—all these arrangements were made for obtaining necessary information. If it is held, and it is maintained by critics, that the information obtained were not sufficient for the purpose of the promulgation of the Permanent Settlement, it can only be said in reply that another commission of inquiry would not have improved matters much. If all the inquiries, mentioned above, failed in their objects, what guarantee was there that another inquiry would succeed? If it is a fact that through the conspiracies of the Zamindars, and through the frauds of others, local inquiries and obtaining of just information were not possible, another fresh inquiry before the Permanent

mination of the amount of revenue. On this point also, reliance was chiefly placed on the daul or estimate, of the Kanungo, checked by the accounts of past collections and by any other offers of mere farming speculators which might happen to be put forward."

The Fifth Report says: "the lights formerly derivable from the Kanungo's office were no longer to be depended on: and a minute scrutiny into the value of lands by measurements and comparison of the village accounts, if sufficient for the purpose, was prohibited by orders from home."

Settlement would have shared the same fate. Armed with that impression, Lord Cornwallis in his reply to the minute of Shore said :—"What is experience that is still wanting, what further experience will be gained in 10 years." The innumerable files that were in existence recording the information of the conditions of the country were sufficient for Lord Cornwallis; he was averse to increasing the reports of inquiries. True, there were circumstances which prevented an accurate survey of the boundaries and as a compensation for that the Government made an extremely heavy assessment with a view to avoid the possibility of any loss that might result through the combinations of the local Zamindars and ryots. The amount of land revenue assessed from Bengal, Behar and Orissa for the year 1790-91 was Rs. 26,800,989.

For the sake of historical accuracy it must be admitted that all these estates did not bear equal incidence of taxation: there was justice to some and injustice to others. There was no deliberate purpose behind it: this inequality was born of circumstances, it could not even be called accidental.

Critics maintain that unchangeable assessment has no advantages which are not equally to be secured by a moderate assessment for a fairly long term of years and this point of view was especially urged by Shore. That was a period when the Government wanted to be sure of the supply of revenue; lest there should be any suspicion in the minds of the Zamindars about their fate in the time of re-settlement which might affect the supply of revenue, the promotion of cultivation and the development of the country, the Government fixed the revenue demand in perpetuity to win the confidence of the subjects and to bring about a welcome departure from the profiteering policy of the Company's administration, pursued by Warren Hastings and others. It

was a case of pledging British honour to the subjects for a sure supply of the maximum amount of revenue.

There are also critics who maintain that no historical justification can get rid of the essential injustice of an arrangement by which those who benefit most by the Administration should contribute least to its cost. It is sufficient to rebut the impression by stating that it is not true that the landlords contribute least and gain most. It is to be noted that the Bengal landlords are responsible for two-thirds of the provincial revenues. Out of the provincial revenues of 10 crores, land revenue and stamp duty yield more than 7 crores. It cannot be held that the landlords escape the provincial burdens or snatch any privilege of avoiding taxation under the protective wings of the Cornwallis Regulations. They pay their legitimate share to the provincial exchequer and decidedly more in proportion to other people's contributions. Land revenue has all along formed the chief source of the revenue of Bengal, which in other words means that the landlords have acted as the financial bulwork of the provincial Government. It is a matter of history that it would not have been possible without the aid of the Permanent Settlement to screw £3,235,259 in 1794-95 as land revenue out of the gross revenue of £5,937,931 from the Government of Bengal.

The Permanent Settlement has made the community economically stronger and is thus a safeguard against famine. Lord Curzon's Land Resolution of 1902 did not accept this theory: "The Government of India indeed know of no ground whatever for the contention that Bengal has been saved from famine by the Permanent Settlement, a contention which appears to them to be disproved by history, and they are not therefore disposed to attach much value to predictions as to the benefits that might have ensued, had a similar settlement been extended elsewhere."

With this proposition¹ it is difficult to agree. Bengal in 1770 was visited by the worst famine that had ever afflicted India. Bengal was permanently settled in 1793 and "since that date famines have been rare in Bengal and there has been no famine within the permanently settled tracts causing any loss to life."²

In 1826, Bishop Heber wrote that "in Bengal where independent of its exuberant fertility there is a permanent settlement, famine is unknown." And thoughtful observers have ascribed the prosperity of the province of Bengal to the Permanent Settlement. Colebrooke declared in 1808 that "the reviving prosperity of the country (Bengal), its increased wealth and rapid improvements, are unquestionably due to the Permanent Settlement."

In the beginning of the nineteenth century, the Marquess of Wellesley, Lord Minto, the Marquess of Hastings—all were convinced of the benefits of the Permanent Settlement. In the sixties of the last century the proposal for extending the Permanent Settlement was mooted. There was a vast erudite volume of opinion in favour of the Permanent Settlement. In 1837 and 1860, the people of Northern India were visited by two great famines. Colonel Baird Smith who was appointed to inquire into the causes of famines in 1860 recommended a Permanent Settlement of land revenue as a protection against the worst effects of famines. The Colonel in his report in 1861 clearly stated: "No misapprehension can be greater than to suppose that the settlement of the public demand on the land is only

1. Dr. Radhakamal Mukherjee in his "Land Problems of India" indulges in a language of exaggeration, born of the zeal of a propagandist, when he says that this theory is economically unsound and historically false: it is the incomparable fertility of the soil of the delta which is an insurance against famine.

2. R. C. Dutt's Reply to Lord Curzon's Land Resolution.

lightly, or as some say, not at all connected with the occurrence of famines. It lies in reality far nearer to the root of the matter because of its intimate and vital relation to the everyday life of the people and to their growth towards prosperity or towards degradation than any such accessories as canal or roads or the like, important though these unquestionably are.....Given the drought and its consequences, the capacity of the people to resist their destructive influence is in direct proportion, I would almost say geometrical proportion, to the perfection of the settlement system under which they are living and growing."

The Permanent Settlement was dictated by a desire to improve the material condition of the people, to encourage the investment of money in the land, to promote the gradual growth of a middle class, to foster the accumulation of capital and of resources which would help the people during years of difficulties, droughts and distress. The community as a whole was made stronger and was likely to overcome the effects of famines.

The benefits of the Permanent Settlement of land revenue were summed up by William Muir, Senior member of the Board of Revenue of the North-Western Provinces, in a Minute, dated 1861: (a) saving of the expenditure of periodical settlements, (b) deliverance of the people from the vexations of resettlements, (c) freedom from depreciation of estates at the close of each temporary settlement, (d) prosperity arising from increased incentive to improvement and expenditure of capital, (e) greatly increased value of landed property, (f) contentment and satisfaction among the people.

That the Permanent Settlement is a financial loss to Government, a pet argument which is fondly put forward by the critics, does not bear scrutiny from the consideration

of higher economics. The expert advisers of the Government have all along held the view that the loss that the Government are supposed to sustain in the perpetual limitation of demand under land revenue is fancied and not real. R. Money, Junior member of the Board of Revenue of the North-Western Provinces in a Minute dated 1861, stated: "No amount of direct and indirect land revenue could bear any proportion to the increased sources of revenue which will directly or indirectly be gradually developed by the Permanent Settlement." It is recognised by all economists that the interest of the Government is best secured by a moderate demand on land; in that case land enjoys the benefit of accumulations of capital: trade and commerce increase and the community grows stronger economically. Colonel Baird Smith with reference to the question of Government's loss due to the Permanent Settlement was of opinion that "there would be no real sacrifice but, on the contrary, a marked increase of the public resources from the creation of the increased private property to which it is conceived that a permanent settlement of the public demand must lead."

Mr. G. F. Edmonstone, the Lieut. Governor of the North-Western Provinces, recommended the Permanent Settlement in a Minute, dated the 27th of May, 1862: "Judging by the effect of settlements for long periods it may be safely anticipated that the limitation of the Government demand in perpetuity will, in much larger degree, lead to the investment of capital in the land. The wealth of the agricultural classes will be increased. The prosperity of the country and the strength of the community will be augmented. Land will command a much higher price. The prospective loss which the Government will incur by relinquishing its share of the profits, arising from extended cultivation and improved productiveness will be partly, if not wholly, compensated by the indirect returns which would be derived

from the increased wealth and prosperity of the country at large."

In 1862, Cecil Beadon, the Lieut. Governor of Bengal, supported the Permanent Settlement and recommended it for the portions, not already permanently settled. Sir Bartle Fere supported the Permanent Settlement. Samuel Lang, Finance Member to the Government of Lord Canning, advocated the Permanent Settlement on higher moral considerations: "We do not exist as a Government merely to get the largest revenue we can out of the country, or even to keep the mass of the people in a state of uniform dead level, though it should be a tolerably happy and contented one, as a peasant tenantry under a paternal Government. If we give a Permanent Settlement, we lay the foundation for a state of society, not perhaps so easily managed, but far more varied and richer in elements of civilisation and progress. We shall have gradations of society, from the native noblemen of large territorial possessions down, through the country gentleman of landed estate, to the independent yeoman, the small peasant proprietor, the large tenant with skill and capital on a long lease, the small tenant on a lease, the tenant-at-will, and the day labourer."

Sir John Lawrence in a Minute, 1862, recommended a Permanent Settlement, though he was opposed to the policy of redemption. Sir Charles Wood in his memorable despatch of the 9th of July, 1862, definitely stated that "the Permanent Settlement is a measure dictated by sound policy, and calculated to accelerate the development of the resources of India, and to ensure, in the highest degree the welfare and contentment of all classes of Her Majesty's subjects in that country."

Sir Charles Wood did not fail to observe that in Bengal, where a Permanent Settlement was made with the Zamindars

seventy years ago, the general progress of the country in wealth and property had been most remarkable.

In 1866, Earl de Grey approved of the introduction of a Permanent Settlement in the North-Western Provinces. In 1867, Sir Stafford Northcote, the Secretary of State for India, supported the principle of the Permanent Settlement and said that Her Majesty's Government were prepared to sacrifice the prospect of an increase in land revenue in consideration of the great importance of connecting the interests of the proprietors of the land with the stability of the British Government. It was only in 1883 that the Secretary of State for India finally rejected the recommendation for introducing Permanent Settlement throughout India, made in 1862 by Lord Canning.¹

The fancied loss of Government

The critics of the Permanent Settlement Regulations complain of the inelasticity of land revenue. The land revenue being fixed, the loss to Government under this head may be apparent. But the pivotal point is that in calculating the loss or gain, the whole resources of the province should be taken into account. The stamp duty (which is more than 3 crores and a half in the province) is the main source of income of the provincial Government and it yields such a figure because of the Permanent Settlement Regulations. The judicial statistics would show that out of the total number of civil suits, nearly 60 p.c. are rent suits and 90 p.c. of money suits are for "Kistibandi". In this wise, the landlords are responsible for the huge figure of stamp duty.

1. R. O. Dutt commenting on the rejection of the proposal writes in his "Economic History of India": "Never has the loyalty of a nation been worse rewarded; never has the peacefulness of a people led more clearly to the withdrawal of a boon proposed in years of trouble and anxiety. It is a bad lesson for a Government to teach and for a people to learn."

The economic necessities of the Permanent Settlement have led to sub-infeudations. The development and promotion of agriculture, prompted by the requirements of managing a large and scattered estate, have brought about intermediate interests. Thus the profits of the landholders are being distributed among a number of middlemen. Sub-infeudation minimises the profits of the landholders and distributes the dividend among the community. The comparative affluence of the middle-classes in Bengal is reflected in income-tax and customs receipts. The taxes on income collected in Bengal in 1928-29 are more than 6 crores. An analysis of income-tax assessments made in 1920 at the instance of the Meston Committee showed that over 90 p.c. of the income-tax collected in the province came solely from Bengal. The income derived from ramifying businesses in several provinces with head offices in Calcutta or other places in Bengal was not even 9 p.c.

Because of the comparative wealth of her ryots and middle-classes, Bengal is in a position to pay more as customs duty. The consumption of Bengal is greater than that of other provinces and that shows the higher purchasing power of the Bengalees—higher than the people of other provinces. The consumption in Bengal of cotton manufactures, foreign liquor and tobacco, machinery, articles of food and drink, cutlery, hardware etc. is comparatively higher.

If we note the income-tax receipts and customs receipts of other provinces, the high contributions of Bengal will be evident :

In lakhs of Rupees.			In 1928-29	
			Income-tax	Customs
Bengal	...	...	625	1,850
Madras	...	...	131	469
Bombay	...	...	317	1,921
U. P.	...	...	90	...

If we calculate the total receipts by the Government of India from Provincial Governments, we find Bengal contributing the highest. Bengal contributed in 1925-26 more than 26 crores to the Central Government under various heads such as Income-tax, Customs, Salt and Opium Excise whereas Madras with a population of more than 42 millions (nearly as Bengal's) contributed 6 crores, Bombay contributed more than 23 crores, and U.P. more than 1 crore only. If both provincial and central taxes are taken into consideration, we find that Bengal is the most heavily taxed province in India with the exception of Bombay which is a manufacturing province and not an agricultural one. If we examine the incidence of taxation per head of population, we get at the following figures :

Provinces		Provincial		Central		Total.	
		Rs.	As.	Rs.	As.	Rs.	As.
Bengal	...	2	5	5	3	7	8
U. P.	...	2	13	0	9	3	8
Madras	...	4	0	1	11	5	11
B. & O.	...	1	11	0	1	1	12
Punjab	...	5	8	0	14	6	6
Bombay	...	8	0	11	11	19	11
C. P.	...	4	0	0	7	4	7
Assam	...	3	5	0	8	3	13

All the facts stated above would go to show that the inelasticity of the land revenue in the province has been amply compensated for by the contributions of the Province under other heads. Paradoxical as it may appear, it is a fact that interference with the Permanent Settlement Regulations may increase the land revenue but would affect stamp, income-tax and customs receipts. An interference with the purchasing power of the people is an interference with the taxable capacity of the province. The abolition of the

Permanent Settlement by revolutionising the fabric of the society would deteriorate the purchasing power of the people and the Governmental loss calculated under land revenue item would percolate through to other sources, in which case Government would be losers in the long run. It must be borne in mind that the inelasticity of the land-revenue has given elasticity to the stamp duty, income-tax, customs duty, and shifting from one head to another by interfering with an old institution which has given a shape to the economic structure of the society is economically unsound.

Land-revenue may have lost elasticity but it has gained certainty. Government are assured of the amount of land-revenue, otherwise the rigid sun-set law would deprive the landholders of their estates. In times of depression, when other provincial Governments have to contemplate and even take recourse to exemption and remission of rents, the Bengal Government could count on their demand under land-revenue. The Land-revenue Administration report of the Presidency of Bengal for the year 1930-31, which is an year of depression, records that Government as landlords could collect only 56·10 p.c. of the current demand, while the collection from the zamindars in the permanently-settled estates was over 90 p.c. This certainty of collection is no small gain to Government.

Sir P. C. Mitter in his evidence before the Taxation Inquiry Committee held that the collection expenses in the non-permanently settled estates were inordinately high. He said : "We have 46,000 sq. miles of cultivated area and on this we have a land-revenue, roughly of 3 crores of rupees. Take for instance, Madras. The area there is 123,541 sq. miles and the land-revenue is 5 crores and 13 lakhs. If Bengal is paying 3 crores on 46,000 sq. miles, it is not under-assessed. You spend in Madras a large amount, perhaps a crore and a half, on collection, owing to the raitwari system."

In Khasmahal estates in Bengal, we find that the expenses of management and collection are high with the attendant evils of uncertainty of collection, though the certificate procedure exists. The absence of personal touch, the formalities of Government, costly and centralised administration in Khasmahal estates—all these factors speak against the nationalisation of lands.

Abolition of the Permanent Settlement—a blunder and an injustice

It is to be noted that the abolition of the Permanent Settlement would immediately enhance the rental from the Bengal ryot. But the deterrent factors in the province are to be taken into consideration: the high pressure of population on agricultural land, the insanitary condition of the province, the enervating climate, the shortness of average life, incapacity of the Bengalee ryots for sustained labour owing to bad physical condition. The public and Government complain of the inelasticity of land-revenue and elasticity means the increase of the rental from the ryots. The ryots are economically unsound not because of the Permanent Settlement, but inspite of it. It has been shown that Government by having a fixed land revenue do not stand to lose. The economic condition of the ryots admits of improvements against which the land-system offers no obstacle. On the other hand, the system of land-tenure has brought about a heirarchy of social structures with zemindars at the top and the cultivating ryots at the bottom with successive grades of middlemen standing one upon another. Any disturbance of the land system would shake the structure of the society which has taken a firm basis on the rock of time, spreading out varied interests and harmonising conflicting claims. The tenancy legislation is weeding out the defects, found inherent in the land system. So it is very hard to make out a

case for interfering with the Permanent Settlement Regulations; the spirit of the Regulations must be allowed to work.

It must also be noted that more than 46 thousands of people are maintained under the system who work as landlords' agents, clerks and rent collectors. They are the limbs of the system, the removal of the one being the virtual extinction of the other.

A charge is made that whenever, in any country, the proprietor ceases to be the improver, political economy has nothing to say in defence of landed property as there established. No one disputes it. But the conditions of Bengal are different. The tenancy legislation has made the landlords mere rent-receivers, and thus the stimulus to the investment of capital on the part of landlords is chilled and killed. If the landlords invest capital on the improvement of the land, there is no certainty that the ryots would agree to pay a higher rent. The landlords in the case of refusal by the ryots can only take recourse to law-courts, where the increase of the productive power of the land due to the landlords' investment shall have to be proved. That is at once difficult and uncertain. Human nature being what it is, it would be expecting too much from landlords, as a matter of that from any body, to invest capital with the risk of uncertainty of the return.

It cannot be denied that an attack on the fundamentals of the Permanent Settlement Regulations would be a blunder. It would also be an injustice. In assessing the comparative effects of the Bengal Settlement of 1793 and the Settlement in England of 1798 (when Pitt made land tax perpetual in England), Mr. R. C. Dutt in the "Economic History of British India" sums up in the following epigrammatic way: "There may be some doubt as to the wisdom of Pitt's Permanent Settlement of the land tax in England; there can be

no doubt as to that of Cornwallis's Permanent Settlement; in England the settlement benefitted the landed classes only; in Bengal the settlement has benefitted the whole agricultural community; the entire peasant population shares the benefit and is more prosperous and resourceful on account of his measure. In England the settlement limited the tax on one out of the many sources of national income; in Bengal it has afforded a protection to agriculture which is virtually the only means of the nation's subsistence. In England it precluded the State from drawing a large land tax to be spent in the country for the benefit of the nations; in Bengal it has precluded from increasing the annual economic drain of wealth out of the country. In England it saved the landlord class from added taxation; in Bengal it has saved the nation from fatal and disastrous famines."

It is to be noted that the land-tax of Bengal was fixed in 1793 at 90 p.c. of the rental. Now it bears a proportion of about 21 p.c. to the rental of landlords. The increase of the extent of cultivation and the productivity of the country by organisation of capital and labour is the work of landlords. The state of affairs obtaining in the country when the Decennial Settlement was made was extremely unsatisfactory. The lands for the most part were uncultivated: there were jungles infested by wild beasts, the public roads and bridges were in dilapidated condition. Now the fallow lands have been brought under cultivation, the jungles have been cleared and the soil thus cleared is yielding much revenue. The landlords did also undertake construction of roads and bridges, excavation of tanks and establishment of schools, colleges, charitable dispensaries. Now that agriculture pays is the miracle that has been brought about by the landlords; it is not a fact that agriculture thrived through mere natural causes.

The State demand was fixed at nine-tenths of the actual rental and the zemindars by investing capital and labour have

increased the scanty one-tenth left to them. Lands which were uneconomic in 1793 have yielded immense profits; this has been brought about not by a fluke but by judicious management and investment. There is another aspect of the question: when the State demand was fixed at 90 p.c. of the rental, many zemindars found it impossible and absurd for them to pay off the revenue in time. Thus many houses fell down; the properties changed hands as they were sold. At that period, it was a very bold step to buy zemindaries agreeing to pay the nine-tenths of the actual rental. However, speculative buyers hazarded themselves in the task and undertook all the attendant risks. If by their ingenuous investment and clever management, they could increase the extent of cultivation and productivity of the soil, the credit must go to them. To be fair to the landlords, it must be admitted that they have not inherited the zemindaries from the Cornwallis Regulations of 1793; they have built them up, the risk was theirs, the capital was theirs, the organisation was theirs. To rob the landlords of their well-earned profits would be administering a deep cut across the fundamental principles of equity and justice.

The evidence of Mr. Pattle, a former member of the Board of Revenue, corroborates the statement:

“The country brought under the Decennial Settlement was for the most part wholly uncultivated. Indeed, such was the state of the country from the prevalence of jungles infested by wild beasts that to go with any tolerable degree of safety from Calcutta to any of the adjacent districts, a traveller was obliged to have at each stage four drums and as many torches: besides, at this conjuncture, public credit was at its lowest ebb, and the Government was threatened with hostilities from various powerful Native States. Lord Cornwallis's great and comprehensive mind saw that the only resource within his reach in this critical emergency was to

establish public credit and redeem the extensive jungles of the country. These important objects, he perceived, could only be effected by giving to the country a perpetual land assessment made on the gross rental with reference to existing productiveness and therefore promising to all those who would engage the encouragement of an immense profit from extending cultivation. Admitting the sacrifice was very great, I think it cannot be regretted when it is considered what difficulties it conquered, and what prosperity it has introduced and achieved. For my part, I am convinced that our continuance in the country depends on the adoption of that measure, and that our stability could not otherwise have been maintained unaltered."

Thus we find that the country prospered under the aegis of the zemindars and there is no reason to regret the Settlement. On the 20th of October, 1883, only two years before the passing of the Bengal Tenancy Act of 1885, the Commissioner of Burdwan Division reported to the Government of Bengal as follows: "The Bengal of to-day offers a startling contrast to the Bengal of 1793; the wealth and prosperity of the country have marvellously increased—increased beyond all precedent under the Permanent Settlement.....a great portion of this increase is due to the Zemindary body as a whole, and they have been very active and powerful factors in the development of this prosperity."

There is another standpoint from which the question of Permanent Settlement should be approached. Because of the Permanent Settlement Regulations, the people of the country have tried hard to increase the economic productivity of the soil; they have also invested much capital on land. The Regulations of 1793 gave a sense of security and the people naturally clung to the soil and worked hard for the improvement thereof. It is because of the Permanent Settlement that the shy capital of the country was released for

investment in the land; the capital and labour have not naturally travelled to trade and industries. The land-system has made Bengal essentially an agricultural country and has in fact gone against the industrial growth of the province. If after 140 years, any attempt is made to change the land-system, that would be doing injustice to those who have made huge investments in the land. Looked at from this standpoint, any legislation tampering with the spirit of the Permanent Settlement Regulations of 1793 would be a piece of discriminating legislation which is the declared objective of every progressive State to avoid. Such an act of expropriation would not only be an injustice but would also revolutionise the entire social and economic structure of the country : it would disturb the vested rights of both the landlords and the tenants.

Conclusion

All land reforms in Bengal must accept for its basis the Permanent Settlement. This measure has been characterised by Sir George Campbell as a sin against posterity and by many others as a spurious product of aristocratic prejudices and sheer ignorance. We have seen that it was not under any delusion but in pursuance of a determinate policy that the Settlement was concluded : it stamped a value upon the lands unknown before 1793 and by the facility which it created of raising money upon them, either by mortgage or sale, provided a certain fund for the liquidation of public or private demands, and proved an incitement to exertion and industry by securing the fruits of those qualities in the tenure to the proprietor's own benefit.

In determining the respective interests in the land of zemindars and ryots under the Permanent Settlement, we shall have to analyse and examine the various passages of the Cornwallis Code. Instead of doing this, there are his-

torians who go outside the scope and plunge into discussions by inquiring into all sorts of state-papers relating to the Permanent Settlement where all shades of opinion are recorded: that is a clear departure from the well-understood method of judicial determinations. Mr. O'Kinealy, a member of the Rent Law Commission, 1880, contended that the frequent reference to state-literature was not only permissible but obligatory and that the practice was sanctioned by Chief Justice Coke, Lord Westbury and other eminent judges. Mr. Field (later Mr. Justice Field) in his remarks upon the minutes of Messrs. Mackenzie and O'Kinealy, said that he was not aware if Chief Justice Coke and Lord Westbury had adopted any canon of construction contrary to the general rule, as urged by Mr. Sidgewick in his learned work on "The Construction of Statutory and Constitutional Law," that "the intention of the Legislature is to be found in the statute itself, and that there only the Judges are to look for the mischiefs meant to be obviated and the remedy meant to be provided." The entire field of State-literature ought to be explored to determine what the law shall be, but not for determining for what the law is. In criticising the Permanent Settlement Code, this rule of construction is not generally applied, nor is it given due appreciation.

The Permanent Settlement is a written solemn contract between the State and the landholders. "It is as much a contract as the Promissory Note of the Secretary of State for India. It is also a contract for the benefits of which the majority of the present landholders of Bengal have admittedly paid full value. Nor was it originally a contract without valuable consideration." The landholders of 1793 engaged to discharge regularly the revenue in all seasons, without any reference to drought, inundation or other calamity of the season, and the revenue, it must be remembered, represented ten-elevenths of the rent-roll. There was another heavy responsibility for the zamindars: the sale law of the Cornwallis

Code provided that if the proceeds of the sale of the defaulters' zemindary should prove inadequate to liquidate the arrears of Government revenue, any other real or personal property belonging to him was to be attached and sold to make good the deficiency (Regulation XIV, 1793, Section 44). This provision, retained in the sale-laws of 1794 and 1799, was repealed in 1868 by an Act of the Bengal Council. The Permanent Settlement was an agreement for valuable consideration, which should stand immutable in the eye of public law.

The public declarations of the State are to be found in the Regulations of 1793, enacted to "enable individuals to render themselves acquainted with the laws upon which the security of the many inestimable privileges and immunities granted to them by the British Government depends." Mr. Ashutosh Mukherjee¹ (as he then was, afterwards Justice Sir Ashutosh Mukherjee) laying emphasis on this aspect of the question strongly remarked: "Nothing can be more unjust, nothing more repugnant to common sense and common notions of fair dealing between man and man, than to construe a contract, a composition, and to some extent, a settlement of uncertain claims, by referring to the vacillating intentions and wishes of one of the parties, which were never communicated to the other. It is the words in which the final expression of the will is conveyed, the plain meaning of which should determine the meaning and extent of the obligation of the parties. The doctrine of the secret direction of the will is dangerous to social security." The Permanent Settlement is to be judged by the Regulations, not by any reference to stray statements of the advocates of either parties.

The advocates of the tenants' rights urge that the Permanent Settlement is a pure legislative enactment which a

1. In an article on the Report of the Rent Law Commission in the October-Number of the Calcutta Review, 1880.

succeeding Legislature may modify or even set aside. But every responsible statesman has held the view that the Settlement was a solemn compact between the Government and the Zemindars and is inviolable without the consent of both the parties. "It is a solemn Royal Warrant of an absolute Sovereign confirming or modifying, or taking the worst view of it from the Zamindar's stand-point, conferring property for considerations pecuniary, political and economical, and past, present and future, and as such cannot be altered or modified without due compensation being made as when land is acquired for public purposes." The Permanent Settlement was designed by Parliament: it was the actual, though not the logical or necessary, sequel to the Resolution of the House of Commons of 1784. Relying upon this, the Court of Directors in their despatch to the Government of Bengal under date the 12th of April, 1786, stated that "we have entered into an examination of our extensive records on the subject of the revenue of Bengal, from a wish to adopt some permanent system compatible with the nature of our Government, the actual situation of the Company and the case of the inhabitants." And from an examination and enquiry, the Permanent Settlement emerged after considerable deliberation both in England and India; the measure was approved and applauded by William Pitt. The Legislature, under the circumstances, may, but should not, disturb the Permanent Settlement without the consent of the parties affected.

The intrinsic merit of the Permanent Settlement was recognised by Raja Rammohan Roy in the early part of the nineteenth century whose interest for the welfare of the ryots was wellknown. The Raja admitted: "the amount of assessment fixed on the lands of those provinces (Bengal, Behar and Orissa) at the time of the Permanent Settlement was as high as had ever been assessed and in many instances higher than had ever before been realised by the exertions

of any Government, Mahommedan or British. Therefore, the Government sacrificed nothing in concluding that settlement. If it had not been formed, the landholders would always have taken care to prevent the revenue from increasing by not bringing waste lands into cultivation and by collusive arrangements to elude further demands; while the state of the cultivators would not have been at all better than it is now."

The Permanent Settlement is economically a sound institution; the rural population is more prosperous and resourceful on account of the measure: agriculture has been made a paying industry. Because of the Permanent Settlement the agriculturist pays a very moderate rent. The majority of the ryots in Bengal are occupancy ryots and their average rent is Rs. 3-2 per acre. Because of the moderate rent, the profits of cultivation are in no way disappointing. If we divide the total value of crops produced (Rs. 2,438 millions in 1928-29) by the number of cultivating families in Bengal (6 millions, each family consisting of 5 members), we get at the average income of an agricultural family which stands at Rs. 406 per family, or Rs. 79 per head of the cultivating class. The Bengal Provincial Banking Enquiry Committee (1930) have calculated Rs. 44 as the average annual income of an agricultural family from subsidiary occupations. Thus the income amounts to Rs. 450 a year. The Committee have also estimated the expenditure of an agricultural family to be Rs. 420 a year. This gives a surplus of Rs. 30 per family, or Rs. 6/- per head. The profits of cultivation can be gauged from the value of land in agricultural holdings. On enquiry it has been found that the average prices per acre of ordinary land yielding winter rice are Rs. 328 in Birbhum, Rs. 98 in Nadia, Rs. 369 in Bogra, Rs. 314 in Mymensingh and Rs. 1,008 in Chandpur. The Bengal Provincial Banking Enquiry Committee estimated the average value of an acre of agricultural land in the province to be Rs. 300.

It is well-known that under the Permanent Settlement Regulations, powers were reserved to provide for legislative and administrative measures for the protection and welfare of the agriculturists. The provisions made at the instance of Government in the past for the protection of the agriculturists have resulted in a lower rate of rent and security of tenure for the agriculturists of Bengal, as compared with the agriculturists in the provinces where the ryotwari and temporary settlements prevail.

Because of the Permanent Settlement, the unearned increment from land entirely goes to the ryots. The rent in the Bengal delta is not economic rent: custom determines the rate of rent. Customary rate, or the prevailing rate, means the rate paid by the majority of ryots in the neighbourhood. The principle of competition is ruled out and there is thus low rent which cannot ordinarily be increased. Therefore, when there is a rise in the price of agricultural commodities, the benefits entirely go to the ryots. Because of the Permanent Settlement, the middle-classes in Bengal are comparatively better off. The purchasing power of the Bengal middle-classes and agriculturists is higher, and that is decidedly the upshot of the Permanent Settlement.

The present landlords are, with rare exceptions, the economic successors of the original holders; they are *bona-fide* holders who have made judicious investments of their hard-earned savings on assets considered safe and attractive. They bought up the zamindaries; as *bona-fide* investors they hazarded themselves in the task and undertook all the attendant risks. The disturbance of the acquired rights in any way would be undesirable from every standpoint; moreover, repercussions will be felt very far. Similarly, many of the tenure-holders and occupancy ryots are the economic successors of the respective interests created under the Permanent Settlement. As such, the present landholders, in

common with the tenure-holders and the occupancy ryots, have a right to the protection of the State against any attempt to deprive them of their respective position, rights, and privileges under the present law.

The land system on the basis of the Permanent Settlement has taken a deep root in the country: the economic and social structures of the country are broad-based on the system and any change thereof would prejudicially affect the entire rural organisation. The Permanent Settlement has created a large number of interests. The total number of landholding units is 57 lakhs and odd. It may be taken that every unit carries at least 3 co-sharers. There are 6 millions of cultivating families, each family consisting of 5 members. It must also be noted that more than 46 thousand people work as landlords' agents, clerks and rent collectors. The Permanent Settlement has given rise to sub-infeudation which has brought about a hierarchy with the zamindar at the top and the ryot at the bottom. The Permanent Settlement has given shape to the rural organisation; it has given shape to the structure of the society; it has moulded Bengal definitely into an agricultural country by making land economic and secure. Tampering with the Permanent Settlement would thus revolutionise the entire rural organisation and disrupt the social and economic structure of the country.

The measure was not an outcome of the short-sighted policy of a parochially-minded provincial Government, but was deliberately imposed and taken advantage of by the highest authority in India. The Regulations of 1793 declared the zamindars to be the proprietors of the soil; the Government then entered into a covenant with them as such: the zamindars on the other hand agreed to pay the increased state demand punctually and regularly. That was indeed a bold undertaking. But the zamindars rose upto the occasion; they extended agriculture, they saw to the interests of the

ryots, they converted lands into economic holdings, in short they brought about peace and prosperity in the land. It would be a breach of contractual obligations if the Settlement is permitted to be tampered with in any way; it would also be prejudicial to the peace and prosperity of the country. Naturally, therefore, the landholders in their own interest, and in the interest of their tenants, claim that the Settlement should be safeguarded against mischievous attempts to the contrary. There is nothing to regret the Settlement, rather there is everything to be proud of it.

The agricultural backwardness of the province calls not for the revision of the Permanent Settlement Regulations of 1793 but for other measures. Publicists are wallowing in the welter of confusion and attack the land-system of the Province, often ignorantly and sometimes wilfully. That does not improve the situation, and the hazy ideas that cloud their minds must not be allowed to envelop judgment. Those who think that a millennium could be reached by scrapping the Permanent Settlement Regulations are living on false hopes and they are, in their own way, merely hastening the dawn of class-warfare, which a poor country like India can ill afford to indulge in. The luxury of class-warfare is for organised labour and for a prospering and prosperous country: the country already knocked down under the chill of poverty should avoid it on any account. Things must be made to behave in a way which contributes to the harmonious improvement of all the units of the province. To nurture animosity based on crass ignorance is, to put it in the language of an eminent satirist, "psychopathic, contemptible and the most pernicious form of idiocy." The essential prerequisite to all-round national advancement is that the one part must not unnecessarily hit the other; the one should lean on the other. Such mutual inter-dependance requires mutual understanding which is befogged by ignorance.

His Excellency Sir John Anderson, at St. Andrews' Day Dinner on November 30, 1932, gave out his considered opinion on the Permanent Settlement which deserves the serious attention of our publicists and economists :

"It is, I believe, often said that Bengal would be all right if it were not for the Permanent Settlement. Such a comment does not seem to me to be particularly relevant but let us examine the point. The Settlement (of 1793) was not the outcome of the gasping and short-sighted policy of a parochially-minded provincial Government but was deliberately imposed by the highest authority in India. Incidentally, it was the same authority who announced that it was "fixed for ever." No doubt the provincial Government would have been able, had there been no Permanent Settlement, to derive a larger revenue from the land : but in that case it would have been impossible under conditions prevailing to-day to collect the full amount of the tax on Jute."

CHAPTER III

TAXATION OF LAND

Land tax in a country inherently agricultural is a delicate affair with the Government : if it is an appreciable portion of the economic rent, it deters production. There must be a clear margin between earning and spending : the absence of capital due to high tax is disastrous for the country. Land tax, in order to reach the ideal standard, must not be uncertain in its incidence, inconvenient in its assessment and collection, uneconomical in its administration, unequal in its distribution, prejudicial to the growth of capital and the improvement of agriculture. There is a fashion among economists to measure taxation by Adam Smith's canons of ability, certainty, convenience and economy. Since Adam Smith, the concept of the State has undergone radical change : Adam Smith thought of the individual and the State in a fixed relationship to each other, he did never dream that the State could use its powers of taxation to further the progress of society. The stage of taxation for mere revenue necessary for State purposes has given way to taxation for social welfare. According to Sir Josiah Stamp, taxation may be looked at from the individual standpoint, or the Government standpoint, or the community standpoint. The principle of benefit is vital from the individual standpoint ; the principle of ability¹ which is measured by monetary measures and not by physical or intellectual strength is natural from the Government standpoint and the

1. Ability may be tested by income and consumption. According to Sir Josiah Stamp, ability may be subjected to the following tests: Quantitative aspect, Time element, Pure income (i. e., without wastage), Earned income (if it has any reserve behind it), Domestic circumstances (i. e. free to spend or free from family claims) p. 14-15 of *Fundamental Principles of Taxation*.

State would always think of the economy of the tax ; equality of sacrifice is the standpoint of the community. Apart from these considerations, even Adam Smith's canons are given new interpretations: the principle of economy is not to mean only the principle of cheapness in the cost of collection, it should be taken in a sense of "general social advantage or minimum interference with the productive efficiency of the country;" the canon of certainty is interpreted in two ways: formal certainty implying, that the rate of taxation is fixed, and actual certainty to the tax payer as to the burden of the tax. It is now very difficult to observe what is the grand principle in taxation. Through the influx of various doctrines, it is felt that the pursuit of justice is one of the main canons of taxation. Finance is now a days a social science: the fiscal object is of course to secure revenue but the social object is to effect a wholesome desirable change in social relations.

There is another tendency visible in modern developments: taxation formerly objective is becoming subjective. "The movement is from taxes *in rem* to taxes in personal." According to Seligman, there is a double movement from personal to real taxes in local taxation and a counter movement from specific taxes to highly subjective taxation for the country as a whole. Taxable capacity of the country is taxable capacity of the people, not of produce. And in a question of land tax, it should be borne in mind that land is a thing where the poor can compete to be partners ; without cultivators, a millionaire cannot do, but in an industry, labourers are not in the same position. There is another important point and that is this: a confiscatory duty would stop most types of saving which is fraught with dire economic consequences. If the land tax brings into the coffers of the State a large portion of the earnings, agriculture is bound to remain unprogressive and uneconomic holdings would be on the increase.

In our country, land revenue, as a subject of land taxation, has stood the effect of custom, and the wear and tear of historical events. "The land revenue is everywhere acquiesced in by the people, and paid without demur ; it has the advantage of an immemorial prescription; and it is quite certain that no other means of raising an equal revenue could be devised which would work with equally little trouble and interference with the people."¹

Land revenue is a direct impost for provincial purposes. There is that academic controversy as to whether land revenue is a tax or rent. "I know of no idler and less interesting war of words," says Baden Powell. The Taxation Enquiry Committee (1924-25) have looked upon the land revenue as a tax for all practical purposes. The arguments² of the land-revenue being treated as a tax are, (1) that the State in India has never claimed universal ownership, (2) that the

1. Baden Powel's Land system of British India PP. 280-81. According to Kaye, everything goes by custom in India; a tax is good or bad, not so much according to political economical theories but according as the people take kindly to it and it can be realised without inquisition. It is found better to trust to what people have long been accustomed to than to devise new plans, however theoretically perfect.

2. The other arguments may also be put forward in support of the tax theory:—[a] Historically the land revenue was only one of the many taxes on income, [b] all lands under cultivation are subject to land revenue irrespective of their yielding an economic rent or not, [c] it is not open to the cultivator to throw up his land at any stage and get compensation from the Government for such permanent improvements as he might have made, [d] the modes of assessment in force allow for difference in the habits and methods of the cultivators in different parts of the country, [e] in theory there is nothing to prevent the Government from claiming a share in the increased produce of land resulting from the ryot's own improvements. [A paper on "Taxation of Land in India" by Mr. N. S. Narasimha Aiyenger in the tenth Conference of the Indian Economic Association.]

Government have conferred proprietary rights in the permanently settled areas and that the Government imposes no restriction on sale or mortgage in the case of ryotwari land, (3) that the land revenue forms a dividend from national income, (4) that the land revenue is a compulsory payment to the State and exceeds the amount of economic rent. Those who look upon the land revenue as rent argue (1) that the land revenue cannot be altered like a tax to suit the requirements of the State, (2) that the Government demand has been in many cases amortised in the purchase price when lands have changed hands, (3) that the limit of assessment to 50 p. c. of the net-produce, the innate nature of the agricultural industry, and the long term of settlement and the considerations at the time of resettlement—all these have made the land revenue look like a rent.

In a permanently-settled area land revenue is decidedly a tax, a proposition with which the majority of economists are in perfect agreement.¹ The Taxation Enquiry Committee hold that the land revenue is a tax of exceptional kind, it is a tax *in rem*, that is, a tax on things and not on persons. To take the land revenue in that light would be wrong: a tax is always a burden upon some particular person or persons. "There never was a tax which did not saddle some one with a load, nor from the nature of things can there ever be such a tax." Dr. Marshall in his Memorandum for the Royal Commission on Local Taxation (1899) wrote as follows, "Taxes are paid by persons, not things. Things are the channels through which many taxes strike persons and in considering the incidence of taxes on persons and the equity of that incidence we have to take account of all the circum-

1. Dr. Radhakamal Mukherjee regards the controversy of rent or tax as irrelevant, since the Ricardian assumption regarding the mobility of labour, wages of labour and profits from land do not hold good. [Land Problems of India].

tances of those persons as owners, users, sellers, purchasers, etc., of those things. The enquiry relates not to the distribution of the burden of taxation between different kinds of property but to the distribution of the burden between different classes of persons with special reference to their interests in different kinds of property."

The basis of the assessment of land may be on the net produce, the net assets, the economic rent, the rental value and the annual value. In Bengal, the basis is the annual value and that is also recommended by the Taxation Enquiry Committee. Annual value, in the case of controlled rent, as in Bengal, is such rent. The basis of taxation, according to Dr. Slater, should be the capital value of land, rather than its annual value. According to the Taxation Enquiry Committee, the chief objections to the capital value being the basis are, (1) that the capital value does not bear a constant relation but varies with the general rate of interest, (2) that the valuation of land is a very difficult affair, (3) that there would be marked inequality in its incidence, (4) that the capital value can only be determined from the annual value, (5) that the capital valuation is to be revised constantly. It is held that rent, controlled as it is in Bengal, can no longer be held up as the annual value of land and rents that exist in the different districts of Bengal have no relation to the value of lands.

Under Regulation I of 1793, the land revenue in Bengal is settled in perpetuity. In 1793, the land revenue, as we have seen, was fixed on 90 p. c. of the rental and now the pitch of assessment is not more than 21 p. c. of the rental. Land revenue at present yields something like 3 crores in Bengal. The total revenue paid by the zamindars of the permanently settled areas in Bengal is Rs. 2 crores and odd, the revenue from the temporarily settled areas is Rs. 25 lakhs

and the revenue from the khasmahal estates is nearly Rs. 75 lakhs. The incidence of land revenue in Bengal¹ is Re. 1-4-8 per acre of cultivated area and 0-10-5 per head of population in the case of the permanently settled areas; in the case of the temporarily settled areas the incidence of land revenue per acre of cultivated area is Re. 1-15-10.

It is evident that the land revenue in Bengal at present is not to be criticised as a high assessment and it is because of the Permanent Settlement that the 90 p. c. of the rental fixed for land revenue is now 21 p. c. of the rental. From 1793 down to the present day, it can be estimated that the zamindars of Bengal have been able through the operation of the Permanent Settlement Regulations to increase the income from Rs. 400 lakhs to more than 1600 lakhs, but there has been no appreciable increase in the land revenue. The critics of the Permanent Settlement argue that the zamindars have misappropriated a total amount of Rs. 1,800 crores approximately: the zamindars obtain now Rs. 16½ crores from the ryots but they pay less than Rs. 4 crores; according to the Permanent Settlement, Government would receive 90 p. c., and accordingly the zamindars ought to have received only 10 p. c. of Rs. 16½ crores, the remainder going out to Government as revenue; instead the zamindars appropriate Rs. 12½ crores. It is an act of "robbery" on the part of the zamindars. This kind of

1. Incidence per acre of land revenue, 1915-16.

		Rs.	As.	P.
Japan	...	6	1	7
Sind	...	3	1	4
Lower Burma	...	2	14	0
Madras	...	2	8	11
Upper Burma	...	1	13	4
Bombay	...	1	5	7
Berar	...	1	4	10
Central Provinces		0	9	10

reasoning is false from start to finish. The 90 p. c. of rental as land revenue can never be a feature of taxation: 90 p. c. was offered because there were possibilities of greater incomes in future, in which case 90 p. c. fixed could easily come down. The 21 p. c. of rental as land revenue, as it stands to-day, is the reward of the enterprise, industry and investment of the landholding classes, the disturbance of which would be an act of expropriation on the part of the Government.

Much grain, as is said, has passed through the mill since Lord Cornwallis gave Bengal the Permanent Settlement. It is undisputable. The 90 p. c. of the rental as land revenue resolves itself into the present position which can be gathered from the following table:—

District.	Incidence of rent per acre paid by tenant.			Incidence of land revenue per acre paid by Zamindar.		
	Rs.	As.	P.	Rs.	As.	P.
Dacca	2	13	1	0	5	0
Mymensingh	3	8	4	0	3	8
Faridpur	2	9	2	0	8	6
Bakarganj	4	8	10	0	7	4
Tipperah	3	2	2	0	7	9
Noakhali	4	4	5	0	8	6
Chittagong	5	0	0	2	14	2
Rajshahi	3	3	0	0	10	0
Midnapur	3	15	5	0	12	0
Jessore	2	7	5	0	6	5

The following table would show the average revenue figures and acres of the khasmahal estates, district by district:

Estates under direct management

	Area in acre	Revenue average per acre.		
Burdwan	3,840	2	3	1
Birbhum	640	5	0	0
Bankura	640	4	3	11

	Area in acre	Revenue average per acre.		
Midnapur	522,240	1	3	5
Hooghly	5,120	7	3	1
Howrah	3,200	7	12	8
24-perganas	160,640	3	4	9
Nadia	23,040	2	12	1
Murshidabad	14,720	2	11	8
Jessore	6,400	2	5	11
Khulna	30,080	1	15	1
Calcutta	35,840	0	5	8
Dacca	15,360	5	9	10
Mymenshingh	43,520	1	2	1
Faridpur	81,280	2	9	2
Bakargang	324,480	4	1	8
Chittagang	430,080	2	6	6
Tipperah	90,240	2	6	6
Noakhali	219,520	2	8	9
Rajshahi	18,560	1	2	2
Dinajpur	640	0	1	3
Jalpaiguri	636,160	1	0	7
Rangpur	3,840	0	2	10
Bogra	28,160	3	2	7
Pabna	58,240	1	1	2
Malda	11,520	1	11	1
Darjeeling	279,040	0	15	8

[The figures given by the Hon'ble Sir P. C. Mitter in the Bengal Legislative Council, July 31, 1931]

In Bengal the Burdwan Raj Estate is most heavily assessed. The following figures of the Burdwan Raj Wards Estate are illuminating :—

	Current Annual Demand		
	Rs.		
Rent due to the estate	47,27,814
Cess due to the estate	4,01,176
Land Revenue due to Government	31,69,241
Cess due to Government	4,43,312

Assessment of Temporarily Settled Estates

In Bengal, the temporarily settled estates cover 3,300 square miles, which yield about 26 lakhs of Rupees as revenue. Temporarily settled estates may be split up into five classes: (1) Diarah Mahals, (2) the Resumed Mahals, (3) Sunderban grants under the Rules of 1853, (4) Sunderban grants under the Rules of 1879, (5) Noabad taluks of Chittagong.

“Under the existing rules embodied in the Survey and Settlement Manual, 1917, the assessment of these estates is made periodically, that is after 30 years, and the revision is made upon the ryotwari assets of the estates of which 70 p. c. goes to Government as revenue and 30 p. c. goes to the lessee who accepts the settlement. In cases where the lessees accept settlements amicably, the extent of their allowance may be enhanced, at the discretion of the Revenue officers, to 40 p. c. of the said assets and in such cases Government get 60 p. c. as revenue.” Such a division of the ryotwari assets causes hardship, for in some cases, the landlords make heavy expenses in reclamation of land and maintenance of embankments, costing not less than 20 p. c. of the ryotwari assets; moreover the lessee has establishment charges which are at least 10 p. c. and there must be some allowance for arrears. Accordingly, attempts have been made in the Bengal Legislative Council urging upon the Government to fix 50 p. c. of the assets in the temporarily settled estates as the maximum Government revenue. Under the terms of the Resolution of the Government of India, 1902, it is stated “that in areas where the State receives its land revenue from landlords, progressive moderation is the key-note of the policy of Government and that the standard of 50 p. c. of the assets is one which is almost uniformly observed in practice and is more often

departed from on the side of deficiency than of excess." The land revenue policy enunciated by Lord Curzon distinctly stated that "where the revenue is paid by landlords in the temporarily settled estates, 50 p. c. of their assets may be fixed as the maximum Government revenue. The minimum term of settlement in temporarily settled estates shall be 30 years." But in Bengal, the framing of rules for definite application of the land-revenue policy as enunciated by Lord Curzon has some difficulties. The Government of Bengal maintain that uniform rules on 50 p. c. basis are not suitable in Bengal, but there is no reason that the spirit of the Resolution of the Government of India, 1902, should not be observed, wherever it is possible. In the 40 years' lease of the Sunderban settlement, there is a specific renewal clause where it is stated that another lease of 30 years will be given and during that period of 30 years, the Jotdars will get 30 p. c. of the assets for his profit, cost of embankment and everything else. The Government maintain that there is a specific contract for 30 p. c. which cannot be violated. But in the 99 years' lease, contract only recites that there will be a "moderate assessment" at the time of re-settlement. The expression "moderate assessment" is certainly to be interpreted by the Resolution of the Government of India, 1902, which stands forth as the definite policy of the Government on the point.¹ The following tables would show the enhancement of assessment of certain Sunderban lots :—

1. Be it noted that the Government Resolution of 50 p. c. of assets as Government revenue crystallised a deliberate attempt to raise the pitch of assessment.

STATEMENT SHOWING REVENUE OF CERTAIN SUNDERBAN LOTS IN 24-PARGANAS.

Touzi No.	Name of holder.	Previous Revenue.	Reduction of Revenue	Reduction under 5th clause of the new lease for grants under the Rules of 1879.	Reduction on account of additional allowance for maintenance of embankments.	Rate of such additional allowance on assets.	Revised Revenue.
1	2	3	4	5	6	7	8
	Grants under the Rules of 1879.	Rs.	As. P.	Rs.	Rs.	per cent.	Rs.
2807	Haramohan Ghose and others	844	0	4,963	355	15	3,545
1457	Anil Kumar Roy Choudhury & others	2,548	0	8,396	600	15	5,997
1446	Surja Kanta Roy Choudhury	812	0	3,047	653	15	2,177
2712	Joydeb Sarkar and others	1,429	0	4,586	328	15	3,275
2822	Radhakanta Sur and others	750	0	5,243	374	15	3,745
2731	Susil Kumar Roy Choudhury	938	0	5,954	425	15	4,253
2733	Shaikh Meher Ali and others	938	0	8,295	593	15	5,925
1392	Roy Satindra Nath Choudhury	750	0	4,862	347	15	4,167
2714	Ram Gopal Das Naskar and others	1,055	0	4,420	316	5	3,473
2687	Ditto	935	15	3,579	512	10	2,812
2688	Ditto	1,177	0	4,792	685	10	3,765
2721	Bejoy Krishna Chakravarty & others	1,200	0	4,679	668	10	3,677
2741	Manindra Nath Mandal	935	13	5,391	770	10	4,236
1722	Hari Charan Pal, trustee to the estate of late Ambika Charan Pal	938	0	7,321	523	5	6,275
2732	Sarat Kumar Das and others	843	4	4,146	740	12½	3,110
2711	Haridas Basu and others	848	0	3,255	465	10	2,557

TAXATION OF LAND

99

Touzi No.	Name of holder.	2	3	4	5	6	7	8
		Rs.	As.	P.	Rs.	Rs.	per cent	Rs.
		Previous Revenue.	Reduction under 5th clause of the new lease for grants under the Rules of 1879.	Reduction on account of additional allowance for maintenance of embankments.	Rate of such allowance on assets.	Revised Revenue		
		Rs.	As.	P.	Rs.	Rs.	per cent	Rs.
2710	Grants under the Rules of 1879.							
2740	Amarendra Nath Dey and others	865	0	0	3,239	231	5	2,776
2739	Roy Manmatha Nath Mitter Bahadur	938	0	0	5,946	425	10	2,872*
2808	Ditto	938	0	0	7,019	501	10	4,715*
	The Mahesh Chunder Land Reclamation and Agricultural Improvement Co., Limited.	206	0	0	1,173	84	15	838
2823	Upendra Nath Chatterjee and others	938	0	0	5,991	428	10	4,707

* After lump reductions on account of waste and fallow lands.

STATEMENT SHOWING REVENUE OF CERTAIN SUNDERBAN LOTS IN 24-PARGANAS.

Touzi No.	Name of Holder	Previous Revenue	Revenue after resettlement	Reduction under 5 clause of the new lease for grants under the Rules of 1879	Reduction on account of additional allowance for maintenance of embankments	Rate of such additional allowance on assets	Revised Revenue
1	2	3	4	5	6	7	8
	Grants under the Rules of 1833	Rs.	As. P.	Rs.			Rs.
1443	Basanta Kumar Mitra	930	3 0	10,663	...	...	5,728
1359	Bibhuti Bhusan Roy and others	183	13 5	1,906	...	...	1,158
1345	The Port Canning and Land Improvement Co., Ltd.	1,278	12 11	10,066	...	...	5,217
1493	Narendra Nath Mitra	1,459	8 0	17,365	...	...	9,657
1439	Mirja Ahmed Ispahani and others, trustees of the estate of late Nawab Nazirali Khan Bahadur	1,337	0 0	17,227	...	...	9,019
1477	The Port Canning and Land Improvement Co., Ltd., Canning	1,151	6 0	18,177	...	...	8,726
1370	Ahidhar Ghose and others	702	2 6	11,557	Clause 5 of the new lease for grants under the Rules of 1879 does not apply.		5,516
3195	Tarapada Ghosh	95	4 2	1,566			1,112

Touzi No.	Name of Holder.	Previous Revenue.	Revenue after Resettlement.	Reduction under 5th clause of the new lease for grants under the Rules of 1879.	Reduction on account of additional allowance for maintenance of embankments.	Rate of such additional allowance on assets.	Revised Revenue.
1	2	3	4	5	6	7	8
	Grants under the Rules of 1853.	Rs. As. P.	Rs.				Rs.
2250	The Port Canning and Land Improvement Co., Ltd.,						
1329	Canning	9) 11 0	1,095				530
1442	Ditto	555 10 6	6,191				3,117
1366	Nirod Chandra Mallick and others	1,138 13 10	11,199				6,565
	Hrishikesh Banerji and others	712 0 0	7,023				4,234

[The above tables were placed by the Hon'ble Sir P. O. Mitter, K.C.S.I., Revenue Member, in the Bengal Legislative Council on the 16th March, 1933, in reply to a question].

The following table shows the land revenue demand in the temporarily settled estates :—

Districts			Land Revenue Demand in 1931-32.
Burdwan	...	...	Rs. 20,937
Bankura	...	...	Rs. 6,883
Midnapur	...	...	Rs. 90,821
Hooghly	...	...	Rs. 19,162
Howrah	...	...	Rs. 29,001
24-Perganas	...	...	Rs. 5,02,420
Nadia	...	...	Rs. 1,44,946
Murshidabad	...	...	Rs. 44,973
Jessore	...	...	Rs. 7,953
Khulna	...	...	Rs. 3,00,076
Dacca	...	...	Rs. 1,22,925
Mymensingh	...	...	Rs. 1,14,149
Faridpur	...	...	Rs. 69,356
Bakarganj	...	...	Rs. 3,29,670
Chittagong	...	...	Rs. 10,817
Tipperah	...	...	Rs. 32,779
Noakhali	...	...	Rs. 52,125
Rajshahi	...	...	Rs. 16,841
Dinajpur	...	...	Rs. 15
Jalpaiguri	...	...	Rs. 4,24,510
Rangpur	...	...	Rs. 3,784
Bogra	...	...	Rs. 12,597
Pabna	...	...	Rs. 44,251
Malda	...	...	Rs. 47,529
Darjeeling	...	...	Rs. 1,00,675
Total			Rs. 25,49,195

According to the revised assessment in certain Sunderban lots which was introduced by the Hon'ble Sir P. C. Mitter, the position is that the landlords would get two-third and the Government one-third of the assets in the case of 99 years' lease of Sunderban Settlements. But there is one incongruity: this revised assessment is to be enjoyed by those who accepted the re-settlement of the 99 years' lease lands under protest; those who agreed to the terms dictated by the

Revenue authorities without protest are debarred from the concessions of revised assessment. It may be noted in this connection that the terms offered by the Revenue authorities in the case of 99 years' lease before the revised assessment were something like 70 p. c. to Government and 30 p. c. to Zemindars, terms which were highly unjust to the Sunderban landlords. This percentage basis acts very harshly on the Sunderban "proprietors."

In the case of 40 years' lease, practically the standard of fifty-fifty for the landlords and Government stands.

To gauge the economic position of Sunderban landlords, it would be interesting to recite that under the existing conditions the landlords do not expect more than Re. 1-4 as rent per bigha from the middlemen or Rs. 2-12 as rent per bigha direct from the tenants. The lands generally grow paddy and the possibilities of fruit cultivation have not been fully explored. The shrinkage of price in rice, due to competition from foreign sources, has adversely affected those dependent on Sunderban lands. There are Sunderban settlers who have redeemed lands and they are naturally in a better position. I recite the above facts to show that the re-settlement of Sunderban lands is, to all intents and purposes, bound to act harshly and unjustly on the "proprietors," especially in view of the shrinkage in the price of paddy and if the situation continues without any hope of redemption, the incentive to having properties in Sunderban areas would die of inanition.

Local Taxation

The modern tendency is to tax the income from land for local purposes. Though all taxes are in a sense payments for services, local taxation has a larger element of payment for services. "A service may be called properly local when

a preponderant share of the benefit can be directly traced to persons interested in the locality." Local taxes are regulated by the principle of benefit and as such the people do not generally complain against them. Where there is a definite return of services for taxes, grievances do not gather force.

In Bengal, there are the public works and road cesses; the education cess is in the process of being applied; the waterways cess is also recommended. Under a consolidating Act of 1880, the public works cess of 1877 was consolidated with the Road Cess of 1871 on the understanding that half of the proceeds should go over to the provincial Government and the other half to the local bodies. This arrangement continued till 1913-14, when in pursuance of the recommendations of the Decentralisation Commission, the whole of the cess was made over to the local bodies, the provincial Government receiving a compensatory assignment from the Government of India equal to the amount of its share. The Cess Act of 1880 has been amended in 1934. The cess is justified because it is essentially local. In Bengal, and Behar and Orissa the Public works and road cesses are based on the rental value ($6\frac{1}{4}$ p. c. maximum), subject to a deduction calculated at half the rate for every rupee of land revenue paid. The rates and the basis of assessment of the cesses in other provinces are given for comparison¹:

Madras: Land Cess, assessment based on the land revenue in the ryotwari areas or on the rental value in the permanently settled areas, rate being $6\frac{1}{4}$ p. c. (minimum) for the ryotwari areas and $9\frac{3}{8}$ p. c. , (maximum) for the permanently-settled areas ; education cess based on the land cess, the rate being 25 p. c. (maximum).

1. Taxation Enquiry Committee Report, 1924-25.

Bombay : Local Fund cess, based on the land revenue, the rate being $6\frac{1}{4}$ p. c. (minimum) and $12\frac{1}{2}$ p. c. (maximum).

United Provinces : Local rate, based on the annual value of land (defined as twice the land revenue) in the temporarily settled areas or on the area under cultivation in the permanently settled areas, the rate being $6\frac{1}{2}$ p. c. (maximum) in the temporarily settled estates or 2 annas 6 pies (maximum) in the permanently settled estates ; the road cess, based on the land revenue in the permanently settled estates, the rate being 1 p. c.

Punjab : Local rate, based on the annual value of land (defined as twice the land revenue) the rate being $5\frac{1}{2}$ p. c. (minimum) and $6\frac{1}{4}$ p. c. (maximum).

Burma : Land cess, based on the land revenue, the rate being 10 p. c.

Central Provinces : Land cess, based on the land revenue the rate being $6\frac{1}{4}$ p. c. (minimum) and $12\frac{1}{2}$ p. c. (maximum)

Assam : Local rate, based on the land revenue in the temporarily settled estates and on the annual value assumed to be Rs. 2 per acre in permanently settled areas, the rate being $6\frac{1}{4}$ p. c.

In ryotwari areas the cess is levied from the landholder who may or may not shift it when subletting his land ; in the United Provinces, the cess is payable by the landlords ; in the Punjab, the landholder is liable for the local rate ; in the permanently settled areas in Madras, the cess is collected from the landlord who is empowered to recover one-half from his tenant.

In Bengal, the landlord pays the cess but is entitled to recover from his tenants "the entire amount less an amount calculated at half the rate for every rupee of revenue paid by him". The ryot pays to the person, to whom his rent is payable, one-half of the cess.

Under the amending Cess Act of 1934, the entire position in Bengal is changed. The rental basis is done away with while the acreage basis, determined on the value of agricultural produce, is introduced. The assessment of the cess is thus shifted from the agricultural rent to the agricultural produce and constitutionally it is a case of touching the land direct for the purpose of public revenue whereas under the rental basis, it is not the land but the rent thereof that is touched—a position in direct contravention of Regulation I of 1793. Another vital change brought by the amending Act is this: the landlord under the Act of 1934 shall yearly pay to the Collector the cess calculated on the annual value of land, less revenue and the landlord in his turn would be entitled from the subordinate interests to the cess calculated on the annual value of land, less rent. With the cultivator's amount of cess, Government would have nothing to do. The situation is that it is no longer with the Zamindars a case of realising cesses from subordinate interests and paying the same to Government; it is the Zamindars who would pay and be responsible for the full amount of cess and they in their turn would get back a portion whereof from the subordinate interests. The picture that the landholders would realise cesses from the tenants on behalf of the Government is completely blotted out. The Act of 1880 stated that the Zamindars would pay a certain amount of cess on their own account on the basis of rent less revenue and would also realise the cultivator's share and they would thus be responsible to the public exchequer for the total cess: the Act of 1934 thrusts greater responsibilities on the Zamindars inasmuch as they will have no hand in

the determination of the acreage rate and that they will be the direct and only party before the Government paying the full amount of cess to the Collector, irrespective of their realisations. Cess thus assumes the character of land revenue.

Under the new Cess Act of 1934, relevant sections as regards the payment of cess are : every holder of an estate other than Government and every farmer of an estate shall yearly pay to the Collector the total cess calculated on the annual value of the cess-paying land, less a deduction to be calculated for every rupee of the land revenue and also a deduction at half the rate on the annual value of all cess-paying rent-free lands ; every holder other than a rent-free holder, of a tenure or other subordinate interest shall yearly pay to whom his rent is payable the total cess calculated on the annual value of cess-paying lands, less deduction to be calculated for every rupee of the rent payable and less also a deduction at half the rate on the annual value of all cess-paying rent-free lands (but where rent payable is equal to or greater than the annual value, no cess shall be payable by him) ; every owner and holder of any rent-free land and every person in receipt of the rents and profits or in possession or enjoyment of such land shall pay yearly to the holder of the estate or tenure or to the Collector, if the Collector has ordered, the total cess calculated on the annual value of such land.

The rate of the cess to be levied for any one year shall not exceed the rate of one-quarter anna on each rupee of such annual value. The acreage rate shall be determined by taking into consideration the general productivity of agricultural lands, the prices prevailing during preceding five years of agricultural produce in the district and the total estimated value of all agricultural produce of the district for the preceding five years. The district would form the unit

and the Collector would fix the acreage rate which shall not exceed one-sixth of the value of the gross produce per acre of ordinary agricultural land. Annual value of land in the Act means the sum of money calculated by multiplying the area of the land by the acreage rate applicable to such land.

The cesses under the Act of 1880 yield annually more than Rs. 92 lakhs; the acreage rate is likely to be instrumental in augmenting the burden on account of the cesses. The cropped area of the province of Bengal was 23,826,700 acres in 1929, the value of the agricultural produce was more than Rs. 240 crores; the normal yield per acre is 12·4 Mds. in rice, 9 Mds. in wheat, 10·2 Mds. in Jute, 5·8 Mds. in oil seeds, 37·2 Mds. in cane sugar, 12·2 Mds. in Tobacco. The augmentation of the burden on account of the cess would affect both the landlords and cultivators, especially the landlords as they would be responsible to the exchequer for the total demand irrespective of realisations from the tenants. The Act of 1880 has the virtue of definitely limiting the ryot's share of cess but the acreage rate is likely to be variable and the ryots might be subjected to an ever-increasing demand of cess. The keystone of the Act of 1880 was, that there must be some profit from land, that what that profit is must be ascertained from a voluntary statement of the assessee and that the tax to be imposed must depend upon the amount of the income derived by the assessee himself. These principles find no place in the Cess Act of 1934.

The new Cess Act is defended because (1) it has removed the accidental anomalies due to inequalities of rent by applying the principle of acreage rate; (2) it safeguards the poorer cultivators; (3) it brings in greater income to the District Boards for removing the crying needs of the districts; (4) it would reward punctual payment by allowing a rebate, thereby eliminating the incentives to default.

The acreage rate was also in the minds of the Cess Committee of 1870-71 when they observed that there were three modes on which the assessment could be made, first, by fixing an increment on the Government *sudder jama* ; secondly, by a levy of tax upon the acreage of land ; thirdly, by a levy according to the annual valuation of land. The last method was adopted because the application of the acreage rate presupposed the existence of well-measured and surveyed lands which were not in existence when the Road Cess Act of 1871 was introduced.

The Cess Act of 1880 has thrown greater burden on the poorer cultivator as the basis of assessment is rental ; the under-ryots pay more rents than occupancy ryots. For instance, the Jessore Settlement Report shows that there are 871,576 raiyati holdings under the Bengal Tenancy Act, and under the Cess Act, 281, 417 holdings are to be treated as tenures and 590,159 holdings as belonging to ryots. In Jessore, the average rent per acre for ryots at fixed rent is Re. 1-5, the average rent per acre for occupancy ryots is Rs. 2-7 and for under-ryots is Rs. 3-14. In Khulna, the ryots at fixed rent pay Rs. 2-6 as rent per acre, the occupancy ryots Rs. 3-6 as rent per acre and the under-ryots Rs. 5 as rent per acre. The cess being based on the rental, it falls more harshly on the poorer cultivators. Thus the new Cess Act of 1934 which is based on the acreage rate introduces a better method of adjusting the inequalities between one class of cultivators and the other. In Bankura, the rental of occupancy ryots is Rs. 13,19,000 & odd, but the annual basis, of which the assessment of cess is made in that district, is Rs. 40,72,000 and odd.

In Khulna, the rent of occupancy ryots is Rs. 3,70,053 and odd, but the annual basis of assessment is Rs. 1,03,93,000 and odd.

In Mymensingh, the rent of occupancy ryots is Rs. 27,000 and odd, but the annual basis of assessment is Rs. 1,18,31,295.

All these show that the incidence of the burden on the different classes of ryots was extremely unequal—so much so that the galling inequalities called for an early revision.

The augmentation of the burden has its justification in so far as the amount is earmarked for utility services. If better roads, better health could be secured by greater income from the cesses, there is nothing inherently wrong in the increase of the burden.

The amount of cesses, as actually realised under the Act of 1880, district by district, is given below :—

District.			Road & Public Work Cesses in 1929-30.
Dacca	...	...	Rs. 3,26,095
Mymensingh	...	...	,, 6,25,356
Bakharganj	...	...	,, 4,97,209
Faridpur	...	...	,, 2,45,283
Chittagong	...	...	,, 2,56,375
Tipperah	...	...	,, 3,11,450
Noakhali	...	...	,, 2,51,599
Rajshahi	...	...	,, 3,30,075
Dinajpur	...	...	,, 2,94,895
Jalpaiguri	...	...	,, 2,60,161
Rangpur	...	...	,, 5,26,131
Malda	...	...	,, 1,74,864
Pabna	...	...	,, 2,23,395
Bogra	...	...	,, 1,43,881

Under the Bengal (Rural) Primary Education Act, 1930¹, the education cess is contemplated to be levied and all immovable property on which the Cess Act of 1880 is applicable is liable to payment of primary education cess. The

1. The history of Bengal [Rural] Primary Education Bill and happenings in the August Session [1930] of the Bengal Legislative Council when it was rushed through and passed at a single

cess is proposed to be levied at the rate of three and a half pice on each rupee of annual net profits from mines and quarries and at the rate of five pice on each rupee of the annual value of land. The education cess shall be paid to the same persons in the same manner and at the same time as the cesses are paid under the Act of 1880. The relevant sections as regards the payment of the primary education cess state : every holder of an estate shall yearly pay to the Collector the entire amount of the education cess calculated on the annual value of land less a deduction to be calculated at one and a half pice for every rupee of land revenue ; every holder of a tenure shall yearly pay to the holder of the estate or tenure the entire amount of the education cess calculated on the annual value of the land less a deduction to be calculated at one and a half pice for every rupee of rent payable by him for such tenure ; every cultivating ryot shall pay seven-tenths of the education cess calculated at the rate upon the rent payable by him.

Proceeds of the education cess are to be paid into the District Primary Education Fund. In addition to the cess realised, the Local Government shall every year provide a sum of Rs. 23,50,000 for expenditure on primary education in rural areas.

The Act has not yet been extended to the whole of the province : specific districts have been selected for experi-

session were extremely interesting. There were 62 non-official Hindu members in the Legislature of Bengal, of whom 57 were elected and five nominated. Of these only 7 members, six of whom belonged to what was known as the depressed class (4 elected and 2 nominated) and one nominated Hindu were present in the Council when the Bill was passed. The Bill was thus passed with the help of the Moslem and European votes without taking the feelings of the Hindu Members into any consideration. The only Hindu Minister, Kumar Shib Shekhareswar Roy resigned as a protest against the Bill.

mentation of the Act. The Act, it may be noted, encountered strong opposition from the people and the measure is extremely unpopular.

Thus Bengal's share in local taxation is not negligible. Under the old cess Act of 1880, the demand exceeds Rs. 92 lakhs and under the new Cess Act of 1934, the demand is likely to be further augmented. Then, there is the primary education cess. The total amount of union rates realised is Rs.42,50,273 from the Union Board population of 1,98,56,117.

Reform Proposals

In all proposals for taxation reform it is clear that logically worked out principles cannot be applied to all countries in all their aspects. There are circumstances which are bound to deflect the Government from adopting the ideal canons of taxation. Bengal of to-day is the creation of the Permanent Settlement: this fact should not be forgotten.

The Taxation Enquiry Committee have recommended that land revenue should be standardised at a comparatively low rate, not exceeding 25 per cent of the annual value so as to give greater scope for local taxation of land, which might be increased up to 4 annas in the rupee on the standard rate of land revenue assessment. Over and above this, special assessment should be imposed for special local improvements. In suggesting substitutes for existing taxes, they have pleaded for extension of probate duties. They also gave half-hearted assent to the imposition of income tax on agricultural income. They recommended that the basis of assessment should be on annual value.

There are also other sets of reform proposals. There are economists who suggest the fusion of land revenue with the Income Tax, in which case incomes from land may be subjected to a progressive and graduated basis, exempting

uneconomic holdings from the land tax and subjecting them to local cesses.

There is another proposal to treat the land tax as a cess for local purposes, subjecting incomes from land above a specified margin to income tax.

There is a proposal suggesting that the Government should buy out all the proprietary rights or those of intermediate holders between the landlord and the actual cultivator; small holdings are to be constituted through a compulsory acquisition of the landlord's estate, the tenants paying in easy instalments for small farms to which the estates are parcelled.

In criticising the reform proposals, the tendencies of modern development in other countries may be kept in view. They are, viz., that the flat rate is kept comparatively low;¹ that the income from, and property in, land is treated for purposes of income tax and death duty; that where an increasing share has been taken of the return from land, it has generally been taken for local purposes.²

In Bengal, due to circumstances born of the Permanent Settlement, the rate of the land revenue could not be disturbed. In 1793, nine-tenths of the rental went out as revenue: through progress in agriculture, cultivation of waste lands and the rise of prices of agricultural commodities, things have improved considerably and the pitch of land revenue assessment has come down to 21 p.c. The Taxation Enquiry Committee recommend that the land revenue should not exceed 25 p.c. It is equally impossible

1. In France the land tax proper amounts to about 10 p. c. of the annual value; in Italy the schedular land tax amounts to 10. p. c. of the economic rent; in Hungary it is 8 to 12 p.c. of the cadastral yield, in Japan it is roughly one-fourth or one per cent of the capital value.

2. In Austria the land tax is a local tax; in England the main tax on land is the local rate.

either "to graduate the rate or to give exemption to particular lands because of the circumstances of the persons who cultivate them." It is really wrong to say that the difficulties of the cultivators arise out of the land revenue system: their difficulties sprout out of a conspiracy of circumstances, the chief feature of which is a large extension of uneconomic holdings. Thus the question of the exemption of uneconomic holdings from assessment has come to the fore. The arguments for exemption are: in a non-economic holding a ryot does not gain a whit from a rise in prices, because the produce of his field is fully consumed and he has to supplement it by wages from other directions; secondly, even in the case of rise in the wages of rural labour, it is not fair to draw on them for rent; thirdly, similar exemption is found in regard to income-tax which keeps clear of a fixed minimum income. It is generally held that nearly 2 to 3 acres of land represent the average uneconomic holding and should bear no taxation. Taxation of uneconomic holdings deteriorates the efficiency of the cultivators or leads them to the womb of the "money-lending wolves". In Bengal where rent is customary and not competitive, where rent is low and the enhancement of which is regulated by strict tenancy laws, where land is fertile and the competition for land is keen, where there is dense population and the agriculturists as a class are immobile, where agriculture is the main industry and the profits are not eaten up by rent, the question of the exemption of uneconomic holdings is beset with many nice complexities. In a country where there is the certainty of revenue, there must also be equal certainty of rent. Hence, sound economists are definitely of opinion that the real relief of the poorest cultivator lies in a better system of rural economy which lays emphasis on better living, better farming and better marketing.

In Bengal, the baffling problem is how to tax the long array of intermediaries dependant on the land: the tenure-

holders pay rents but no revenue to Government. The most equitable way, according to some, of taxing their income would be the imposition of income tax according to a graduated scale. This seems to be a simple solution but there are practical difficulties. The Government of India's despatch on Constitutional Reforms, 1930, states :

"As regards the taxation of agricultural incomes, in view of the difficulties which this subject presents, it would, in our opinion, be unsafe to count on the increase which would be obtained from the higher rate of taxation on composite incomes."

The practical administrative difficulties are not to be minimised : the estimates of agricultural profits are extremely difficult. The only alternative in a permanently-settled area is the extension of probate duties or local cesses. It is true that would not be the most ideal form. The cesses are being extended in Bengal : the primary education cess is on the point of being imposed. The complaint about the land revenue disappears if it is treated as a local rate, to be spent in the rural areas on education, sanitation, public works etc. In that case, the people dependent on land would experience the tangible beneficial effects brought about by the spending of land revenue and there would then be no talk of injustice or of its burden. Local rates, even when burdensome, can find justification in the fact that they are to be spent for the ostensible benefit of the tax-payer and the taxes spent are likely to increase the efficiency of the locality.

Death duty is freely recommended for our country. It is a form of taxation of accumulated wealth.¹ There are

1. In Great Britain, the receipts from death duties in 1922-23 were of £56,494,667 forming 6·9 p. c., of the total tax revenue ; in Holland 6·2 p. c., United States 4·8 p. c., in Italy 2·2 p. c. of the tax revenue.

two main forms in inheritance taxation, that can be found after the examination of the system prevalent in other countries and they are :

- (a) A transfer or mutation duty which in principle is a duty payable by reason of the passing of property on death regardless of its destination.
- (b) A succession duty, levied by reason of the acquisition by a beneficiary of assets belonging to a deceased person.

The inheritance tax is inexpedient for our country for the following reasons :

- (1) that it will fall with special severity upon the land-holding class,
- (2) that great difficulty is experienced in the valuation of chattels,
- (3) that the habit of investment is in its infancy,
- (4) that no reliable figure for trading incomes on which the capital value of business concerns could be based, is available,
- (5) that in a joint family, there are plurality of heirs.

In Bengal, there is a considerable amount of taxation levied in the shape of probate duties; there is the principle of graduation and the maximum has been raised to 5 p.c. There is no exemption: no just apportionment between large and small estates. In 1923-24, Bengal's probate duties yielded Rs. 15,32,206. Accordingly, the imposition of inheritance tax in our country cannot be recommended; for State purposes, the extension of probate duties may be adopted.

Taxation of Agricultural Income

In all proposals for the reform of taxation, it is freely suggested that the imposition of the income tax on a graduated scale, exempting uneconomic holdings, on the profits from land is the ideal method, but in Bengal there are circumstances which necessitate the withholding of the "ideal" proposal.

In Bengal under Regulation I of 1793, the Jama has been settled in perpetuity and naturally the augmentation of public demand by taxing profits from land has turned out to be a very delicate question. The Permanent Settlement Regulation I of 1793 is very definite on the question of the limitation of public demand upon the land which is supported by the following expressions :

"The limitation of public demand upon the land" (Section I); "the Jama assessed upon their lands under the Regulations would be continued after the expiration of ten years and remain unalterable for ever" (Section II, Art I); "to declare the Jama which has been or may be assessed upon their lands under the Regulations above-mentioned, fixed for ever" (Section III, Art. II); "at the expiration of the term of the Settlement no alteration will be made in the assessment, which they have respectively engaged to pay but that they and their heirs and lawful successors will be allowed to hold their estates at such assessment for ever" (Sec. IV, Art. III); "they and their heirs and lawful successors shall be allowed to hold their respective estate at such assessment for ever" (Section V, Art. IV); "such individuals and their heirs and lawful successors shall be permitted to hold the lands at the assessment at which they may be transferred for ever" (Section VI, Art. V); "from the earliest times the public assessment upon the lands has never been fixed" and "the zemindars, independent talukdars or other actual proprietors of land, with or on

behalf of whom a settlement has been or may be concluded, are to consider these orders fixing the amount of the assessment as irrevocable and not liable to alteration by any persons whom the Court of Directors may hereafter appoint to the administration of their affairs in this country" (Section VII, Art VI); "for the limitation of the public demand upon the lands the net income and consequently the value (independent of any increase of rent obtainable by improvement) of any landed property.....will always be ascertainable by a comparison of the amount of the fixed Jama assessed upon it" (Section X, Art. IX).

In the face of those definite commitments, the question of further taxation of agricultural income has become absorbingly interesting, and an attempt by the State to encroach on the profits from land has naturally been interpreted to be a confiscatory move. But exigencies and necessities have often forced the Government to contravene the Regulations. To stabilise the finances after the Sepoy Mutiny, the Income Tax Act of 1860 was passed which did not exempt the agricultural income from the permanently settled estates. That Act lasted for five years. In 1869 it was revived and was in force upto 1873. In 1871, the first Road Cess Act was inaugurated in which agricultural income was assessed. In 1877, the Bengal Public Works Cess Act was imposed. In 1880, both the Cess Acts were consolidated under one Act. In 1878, a License Act was passed, as a counterpart of the cess, whereunder all persons carrying on trades, dealings and industries were to take out licenses and pay for the same. In 1886, the Income Tax Act was passed incorporating in it the principles of the License Tax and agricultural income was exempted on the clear understanding that the lands of the permanently settled estates are already burdened with cess, an additional burden over and above the land revenue. The Cess Act deals with land: the Income Tax Act taps all other property; the cess is for

agrarian population whose main occupation is agriculture: income tax is for urban population whose main occupation is trade. In 1918, there was an attempt to include agricultural income in the Income Tax Schedule but it proved abortive, inspite of persuasive attempts by Sir William Meyer, the Finance Member and Sir George Lowndes, the Law Member. In Bengal, according to the pledge, income-tax on agricultural income can come in if the Road and Public Works Cesses go out: both cannot remain on the Statute.

The income tax on agricultural income which was levied in 1860 and abandoned after a brief spell of years and which is recommended by the Taxation Enquiry Committee (1924-25), the Simon Commission (1929) and others and the local rates on profits from land in the shape of cesses which are in existence are supported on the strength of the fact that they do not contravene Regulation I of 1793. The majority of advocates of further taxation of land do not minimise the sacrosanct nature of the Permanent Settlement: their contention is that land revenue should not be confused with a general land tax. Mr. Wilson in introducing the Income Tax Bill of 1860 which included agricultural income argued that Lord Cornwallis had no intention to exempt the landowners from any general tax that the necessities of the State required. He pointed out to the Council that Lord Cornwallis was a believer in the equality of taxation: "all who enjoy the protection of the State must pay for it in accordance with their means". Therefore, the subjects ought to contribute to public exigencies in proportion to their incomes. "I hold him (the landlord)", said Mr. Wilson, "to be exempt from any special charge upon his land but to be liable to any general tax that applies to all others." It comes to saying that income tax is not such revenue or public demand as the Government meant by Regulation I of 1793 to debar itself from assessing in future; it is a tax on

profit and it does not increase the jama of any estate. Jama is not taxation: Government never intended by the Regulations to exclude further taxation according to necessity, it meant only that there would be no reassessment of Jama. It is pointed out that the word taxation is nowhere to be found in the Regulations.

Mr. Wilson further argued that the land-tax in England was commuted for a fixed rate or redeemed, but that did not include exemption from the income-tax on the score that it was indirectly a charge upon the land, because it was assessed upon the rents. In every English Loan Act, the dividends are declared free from all taxes, charges and other impositions whatsoever but that provision has never been held to exempt them from income tax.

The Duke of Argyll, the Secretary of State for India, to whom reference was made for settling the wisdom or otherwise of the imposition of Road Cess in 1870 in Bengal in the face of definite commitments made by Regulation I of 1793 argued in his despatch of the 12th May 1870 that "if the words of the Permanent Settlement do not rule the case in favour of the power now claimed by the Government (i.e., imposition of cess on the permanently settled estates), neither do they rule it in a sense adverse to that claim." In his opinion income tax and land revenue were not of the same species: income tax was not an increase of the public demand levied upon the Zamindars in consequence of the improvement of their estates, it was levied upon a wholly different principle and in respect of a wholly different kind of liability. One index and proof of this difference lay in the fact that although this "public demand" was made upon those to whom the promises of the Permanent Settlement had been given, it was made upon them only in company with other classes of the community and with no exclusive reference to the source from which their income was derived. Continuing the Duke of Argyll argued:—"The

same essential distinction may be established between the original assessment which was "fixed for ever" and every kind of tax, or cess or rate, which is levied irrespective of the increased value or produce of land, and with no view to a re-adjustment of the proportions in which the produce of the soil is divided between the State and the owners of land holding under it. The best method of marking this distinction, and of making it clear, is to provide that such cesses should be laid upon the owners of the land only in common with other owners of property which is of a kind to be accessible to the rate." The Duke of Argyll in giving the conclusion of Her Majesty's Government, said—"This conclusion is that rating for local expenditure is to be regarded as it has hitherto been regarded in all the provinces of the Empire, as taxation separate and distinct from the ordinary land revenue, that the levying of such rates upon the holders of land, irrespective of the amount of their land assessment, involves no breach of faith on the part of the Government, whether as regards holders of permanent or temporary tenures, and that where such rates are levied at all, they ought, as far as may be possible, to be levied equally without distinction and without exemption upon all the holders of property accessible to the rate." The Duke argued that the right of the Government to assess agricultural income had been decided in the Income Tax Act of 1860. A tax or cess which is not an augmentation of public demand in consequence of the improvement of their estates, is justified and does not affect the Settlement. The Duke further supported the cess from a financial point of view: if there be no such cess, "there appears to be no alternative unless it be the alternative of allowing the country to remain without drainage and without roads and without education." The support of the Duke for imposition of cesses was conditioned by two factors viz., that the whole amount raised by such taxation must be devoted to specific local purposes, and that land must not be taxed alone, all

other property being also assessed to some sort of tax analogous to the cess.

Sir James Fitz-James Stephen in placing the case for the imposition of cess in 1871 did not value the arguments that Lord Cornwallis had no right to tie the hands of his successors in 1871 and that if any legislature tried to tie the hands of its successors, it did things which were beyond its power. Speaking on the moral right he emphasised that the Permanent Settlement must be observed. Sir James' significant statement was that the movement for the scrapping of the Permanent Settlement must come from the community whom it affected: the Government would not break its plighted pledge. Continuing he said: "the great object of the Permanent Settlement was to put an end to this uncertain, indefinite and fluctuating state of things, and to substitute for it a system of permanent property in which the Zamindars were to be landlords on the English model, the ryots tenants also on the English model and in which the land revenue was to form a permanent rent charge of fixed amount to be paid to the Government by the Zamindar." Sir James supported the cess on the main ground that the Permanent Settlement reduced to a certainty only one particular charge on the land which had previously been of variable amount and so freed the landholders from uncertainty which had previously existed in respect of it. Sir James was keenly for the observance of the Permanent Settlement Regulations.

Mr. Schalct (Member of the Board of Revenue) in moving for leave to introduce a District Road Cess Bill in 1871 in the Bengal Legislative Council held that the Permanent Settlement clearly and distinctly defined the right and title of the zamindar in relation to the Government and had on the other hand bound the Government not to increase their demand for land revenue but that it in no way freed the zamindar from sharing the burdens of such taxation as might be imposed in common with the general community.

Sir Steuart Colvin Bayley, Lieut.-Governor of Bengal, supported cess on grounds of necessity and of expediency. He was frank enough to confess that "the one principle in the Cess Bill which was most obviously open to objection was that which made the estates of Zamindars liable for the arrears of the cess by sale as for arrears of revenue. The Zamindars might fairly urge that this was no part of their contract; that they never agreed to collect extra cesses from their ryots for the benefit of Government and that the hypothecation of their estates by the summary process of sale for the arrears of this cess unjustly depreciated the value of their property. He could not altogether deny this and he was glad when the Hon'ble mover said the Government would gladly receive any suggestion which would render it possible to do without this summary proceeding."

Sir Barnes Peacock took his stand in 1860 on the ground that the Government had bound themselves not to raise the Jama of the proprietors of permanently-settled estates as a separate and independent body but that the landholders under the Permanent Settlement were justly liable to the income tax, which was for the whole community.

In a Full Bench reference of the Calcutta High Court in the King Emperor V. Raja Probhat Chandra Barua¹ the majority of Judges (Ghose J., Buckland and Panton J. J.) held that the words relating to the limitation of the public demand on permanently settled estates in Regulation I of 1793, taken in their historical setting, really meant that there would be no resettlement of such estates with an increment of revenue on account of any improvements affected: they could not be construed to imply an immunity from any general tax which Government might levy on the income of all persons, whether Zamindars of permanently settled estates or not.

1. I. L. R. 54 Cal. 863.

This majority judgment has been affirmed by the Judicial Committee of the Privy Council. Their Lordships said: "They are unable to find in the Regulations any statement or assurance that a zemindar will never be liable to taxation in respect of the income derived from his zemindari or (to put the matter from another point of view) that a zemindar will, as to so much of his property as consists of income derived from his zemindari, be exempt from schemes of taxation applicable generally to the incomes of the inhabitants of British India."

"In their Lordships' opinion, while the Regulations contain assurances against any claim to an increase of the Jama based on an increase of the zemindari income, they contain no promise that a zemindar shall, in respect of the income which he derives from his zemindari, be exempt from liability to any future general scheme of property taxation, or that the income of a zemindari shall not be subjected with other incomes to any future general taxation of incomes.

"Their Lordships agree with the views expressed by by Ghose, J, in the following passage from his judgment :

"There was no promise or engagement of any description whatsoever by which the Government of the day surrendered their right to levy a general tax upon incomes of all persons irrespective of the fact whether they are zemindars with whom the Permanent Settlement was concluded or not."

Justice Mullick in the Reference¹ (Maharajadhiraj of Darbhanga Vs. Commissioner of Income Tax) held: "In one capacity the Company represented the Sovereign and the general community; they were also the owners of the soil; they surrendered to the Zemindar no part of their rights in the former capacity which included the right to tax but only

a portion of their rights of ownership, namely, the right to the produce of the soil; and it seems clear from the context that the declaration that the jama was unalterable could only refer to the limited purpose of the contract. Indeed, having regard to the fact that the proceeds of the Settlement constituted the principal source of revenue at that time, it is difficult to see how any general exemption from taxes upon profits could have been intended; for to a proprietor whose only source of income is the produce of his estate every tax, be it personal, direct or indirect, is a tax upon land. It is immaterial that the tax is calculated on the value of his land, that is merely a matter of machinery and whether the basis of calculation is the produce of his land or the number of his servants or the income from his trade or profession the tax in the end falls upon the land. Even if it were conceded that the assessment had all the attributes of a land-tax (which I have already found it had not) no exemption from future taxation was expressly or by implication given, and therefore the decision in the *Associated Newspapers, Limited v. Corporation of the City of London* (1916) 2 A.C. 429 has no application. Here there was no exemption from taxation but merely a promise that the rent would not be enhanced, and therefore the question whether the general words of subsequent taxing statutes are sufficient to exonerate the assessee does not arise."

Those who advocate that the profits of land can be further taxed for the necessities of the State and for local purposes, never failed to point out that they had no mind to ignore the Settlement. Mr. Wilson, the Duke of Argyll and others did not minimise the Settlement: they did never say that it was a financial blunder or political stupidity, they merely argued that the Settlement, construed rightly, did not exempt the landowner from further taxation of the profits of land along with the other members of the community and that the imposition of a cess or of a general tax was not

an addition to the jama. It was only the majority decision of the aforesaid Full Bench reference which was to the effect that although no express words were used, there was by the Income-tax Act of 1922 a legal and effective repeal of the Permanent Settlement Regulations so far as income from land is concerned: for the rule that when the subsequent statute is general and the prior statute particular and two are repugnant to each other, the prior statute cannot be repealed by implication, cannot be pressed too far and a general statute may repeal a prior special statute. This decision raises a very controversial question that the Permanent Settlement, designed and executed by Parliament, can even in a fractional way be repealed by a legislation in India—a point beset with constitutional complications of the highest nature.

There is the other side of the question: there are those who advocate that on the face of the Settlement, the profits of land cannot be further taxed and if they are, there is a direct infringement of Regulation I of 1793. Their case, if not unanswerable, is sufficiently well-grounded.

The second part of Section VII Art. VI of Regulation I of 1793 runs in these words: "The Governor-General in Council trusts that the proprietors of lands sensible of the benefits conferred upon them by the public assessment being fixed for ever will exert themselves in the cultivation of their lands under the certainty that they will enjoy exclusively the fruits of their own good management and industry and that no demand will ever be made upon them or their heirs or successors by the present or any future Government for an augmentation of the public assessment in consequence of the improvement of their respective estates." Here is a clear promise that whatever may be the income or profits of the Zamindar by reason of his having improved his estate, the same will not be further touched or taxed. Any tax or cess under whatever cloak it is imposed is bound to be a deduc-

tion from his dividend from his profits arising out of land. Jama was fixed in perpetuity consolidating various abwabs and other exactions from the land. The landlord has been assured by the Settlement that he would enjoy the fruits of his labour, subject to a fixed payment of revenue: he has invested money on the sacredness of that pledge, he has purchased estates calculating only the revenue fixed in perpetuity, he has let out or sold his lands knowing of no other burden than fixed revenue. Deduction of profits from land because of tax or cess would mean imposition of a penalty on landlords for having worked harder and saved more than their neighbours; future buyers would acquire land and securities at a reduction of price, equivalent to the tax imposed, which tax they would escape from paying while the original possessors would remain burdened with it even after parting since they would have sold their land or securities at a loss of value equivalent to the fee-simple of the tax. The augmentation of public demand is also unjust to the ryots: every ryot was also assured by the Settlement that he should hold his land according to the nirik of the village, and that he would be liable to pay no other demand save his customary rent, and the lakhirajdar was assured that on proof of certain titles, his lands should remain unassessed and untaxed. All these pledges and assurances are broken by the imposition of Road and Public Works Cesses.

It is a false contention that Lord Cornwallis never intended to exempt the landlords from further taxation of profits arising out of land. On the 6th March 1793, Lord Cornwallis wrote to the Court of Directors: "we think this a proper opportunity to observe, that if, at any future period the public exigencies should require an addition to your resources, you must look for this addition in the increase of the general wealth and commerce of the country, and not in the augmentation of the tax upon the land At

present almost the whole of your revenue is raised upon the lands; and any attempt to participate with the landholders in the produce of the waste lands would operate to discourage their being brought into cultivation; and consequently prevent the augmentation of articles for manufacture or export. the duties on the import and export trade (exclusive of any internal duties which it may in future be thought advisable to impose) that may hereafter be levied will afford an ample increase to your resources without burdening the people or affecting in any shape the industry of the country." The letter clearly indicated what Lord Cornwallis intended.

Lord Cornwallis' minute of the 3rd February 1790 which explicitly stated what he wished to achieve by fixing the Jama runs thus: "In raising a revenue to answer the public exigencies, we ought to be careful to interfere as little as possible in those sources from which the wealth of the subject is derived. Agriculture is the principal source of the riches of Bengal; the cultivator of the soil furnishes most of the materials for its numerous manufactures. In proportion as agriculture declines, the quantity of these materials must diminish, and the value of them increase, and consequently the manufactures must become dearer, and the demand for them will be gradually lessened. Improvement in agriculture will produce the opposite effects. The attention of Government ought therefore to be directed to render the assessment upon the lands, as little burdensome as possible: this is to be accomplished only by fixing it. The proprietor will then have some inducement to improve his lands; and as his profits will increase in proportion to his exertions, he will gradually become better able to discharge the public revenue. By reserving the collection of the internal duties on commerce, Government may at all times appropriate to itself, a share of the accumulating wealth of its subjects, without their being sensible of it. The burden will also be

more equally distributed; at present, the whole weight rests upon the land-holders and cultivators of the soil."

When the Permanent Settlement was about to be completed, Mr. Law, the Collector of Behar, wrote a Minute suggesting that a clause should be inserted in the compact that under pressing and extraordinary emergency, the Government should have the power of demanding something in addition to the fixed revenue. In reply, both Sir John Shore and Lord Cornwallis said that that would entirely stifle the cardinal principle of the Settlement and that in the case of future emergency the Government should look to commerce and the increased wealth of the country for increasing their revenue resources. Sir John Shore replying to Mr. Law said: "This qualification is in fact a subversion of the fundamental principle; for the exigencies not being defined, a Government may interpret the conditions according to its own sense of them, and the same reasons which suggest an addition to the assessment may perpetuate the enhancement." What Sir John apprehended has really happened: the Government have interpreted emergency in their own way and imposed cesses.

Lord Cornwallis wanted the future Government to look to export, import duties and internal duties for further augmentation of public demand. The Court of Directors looked to the taxation on the necessities or luxuries of life. In 1811 the Court of Directors said: "It was indeed imagined at the period of the establishment of the Bengal Settlement that in proportion as the effects naturally to be expected from an enlarged and liberal policy were developed, in proportion as the land was improved, activity given to commerce and as the people were enriched, our Government would be able, by means of taxation on the necessities or luxuries of life not only to indemnify itself for the sacrifices it had made, and for any contingent loss which it might sustain from the depreciation of money but that our

revenue might be made to advance in equal proportion with the prosperity of the country and that both would go on flourishing in rapid progression."

In connection with a Bill in 1854 to amend the law relating to the appointment and maintenance of Police-chowkeedars in cities, towns, stations, suburbs and bazars in Bengal, the Hon'ble Mr. Peacock, the then Law Member of the Governor-General's Council in a Minute, dated the 6th March 1854, held that the levy of a local rate on the permanently settled estates would involve a breach of the Permanent Settlement. The Governor-General, the Marquis of Dalhousie, was so much impressed with the arguments of the Hon'ble Mr. Peacock that he omitted the word "village" from the draft Act. This was supported by other members of the Council, the Hon'ble Mr. Dorin, the Hon'ble General Low and the Hon'ble Mr. Halliday. Accordingly, the said Act omitted all assessment of lands.

In 1864 the opinion of the British Indian Association was sought on the advisability of imposing cesses for the construction of roads and expansion of education and in a public meeting of the landholders of Bengal held in the hall of the British Indian Association on the 2nd September, 1864, under the presidency of Mr. Ramanath Tagore, the following resolution was unanimously passed:—"That in the deliberate opinion of this meeting the proposed cess on the land for education and roads would be a direct infringement of a solemn covenant of Government, confirmed by the British Parliament."

In 1870, the question of the imposition of road cess in Bengal was referred to the Secretary of State, because the Government of Bengal flatly refused to impose such a cess in the face of the stiff opposition from the people. The letter of the Government of Bengal to the Government of

India regarding the proposed Road and Education Cesses, dated the 3rd April, 1869 stated :

“The Governor-General in Council may fully rely on the Lieut.-Governor to give no encouragement to any notions that the Permanent Settlement entitles the Zamindar to evade his just share in the taxation of the country; but on the other hand, His Honour is confident that the Government of India will never deliberately contemplate any step which, in the judgment of disinterested and well-informed economists, would amount to a real breach of faith with the Zamindars. Now, it seems to the Lieut.-Governor that in the present instance, Government is placed in the following dilemma : if the cess is to be regarded as analogous to the cesses which have been levied for similar purposes in other parts of the Empire, that is, as a reduction of the share of rents which is left to the Zamindars, it will be a most distinct breach of the Permanent Settlement; but if on the other hand, it is to be regarded as a new taxation, then it must be judged by the general principles of the equality of taxation, and so judged it will be clear that Bengal is called upon to submit to special taxation on what has been formerly assigned to individuals as their property—a taxation on property which the so-called cesses elsewhere are not.”

The Government of Bengal were faithful in placing the dilemma before the Government of India, while the latter represented the case in a different light to the Secretary of State. The Government of India wrote to the Secretary of State : “Considering moreover that nothing can be done in this matter without legislation, the Government of India is placed in a difficult position. We cannot force the Bengal Council to legislate and it would be hardly expedient to legislate on such a purely local matter in the Council of the Governor-General and in opposition to the views of the local administration. This last difficulty, however, will be greatly diminished, if not altogether removed after the local Council

has passed a measure imposing a cess on the land for the construction of roads. When this has been done, a mere addition to the rate of the Cess will possibly give everything that is required for educational purposes." This mischievous move on the part of the Government of India was successful in so far as the India Council by a majority of one favoured the imposition of the Road Cess in Bengal. The despatch of the Duke of Argyll emboldened the Government of India to force and do things which were in direct contravention of the Settlement. The minutes of the dissenting members of the India Council are illuminating: Sir Etskine Perry opined that a direct violation had been made; Sir Frederick Halliday said that the cess could not prove otherwise than severely and undeservedly grating and painful to the feelings of the zamindars; Mr. H. T. Prinsep characterised the proposed cess as an abwab; Mr. R. D. Mangles lamented that they had no standing ground in India except brute force if their character for truth was forfeited and that the pledge had been thereby broken; Mr. Frederick Currie said that financial necessities would not justify laying special tax exclusively on the Zamindars of Bengal; Sir H. C. Montgomery said that Government had been guilty of breach of faith.

The British Indian Association, Calcutta, submitted a petition of Memorial to Parliament criticising the despatch of the Duke of Argyll and protested in a public meeting on the 3rd of April 1870 against the imposition of the cess as being a direct breach of the Settlement.

The Select Committee of the House of Commons on the State of Affairs of the East India Company said in 1812 with reference to the Permanent Settlement:

"New taxes, under any pretence whatever, were prohibited."

"The amount when determined and on reference approved by themselves, the Directors intended, should be considered as the permanent and unalterable revenue of their territorial possession in Bengal."

"The next consideration was the amount of the assessment to be fixed on the lands. This as it was subsequently to become the limit of the resource which the Government could ever in future derive from the land, it was necessary, should be fixed with the utmost accuracy."

The Directors in England in their letter to the Governor-General on the 29th August, 1792 said :

"The demand from the land, the great and now almost the only source of revenue, is fixed; with the exception of any addition which may be made from resumption, or what may arise from uncultivated lands (if that resource should be available) it is fixed for ever."

The only powers reserved by the Government were (under Art. VII of the Proclamation and Section 8 of the Regulation) to

(1) make enactments for the protection and welfare of the dependant talukdars, ryots and other cultivators of the soil,

(2) if thought necessary, to re-establish sayer collections or any other internal duties no part of which was to belong to the Zamindars,

(3) impose assessments on alienated lands,

(4) resume the whole or part of Police allowances in land or money, such resumed allowances, however, to be collected separately and not added to the Jama and to be applied solely to the purpose of defraying the expense of the Police.

The true import of the Permanent Settlement was given by Judges Tucker, Barlow and Hawking who judicially declared: "It is a narrow and contracted view to suppose that the Permanent Settlement consists in nothing more than the obligation on the part of the Zamindar to pay a certain amount of revenue annually to the Government. The Settlement is a compact by which the Zamindar engages on his part to pay a fixed amount of revenue to the State; and the State on its part guarantees to the Zamindar by means of its judicial and fiscal administration the integrity of the assets from which that revenue is derived and which in fact constitute the Government's own security for the realisation of its revenue."¹ "The integrity of the assets" is certainly affected by making any new demand upon the land.

Sir George Barlow (reputed author of the famous minute of Lord Cornwallis) wrote: "The change (made by the Permanent Settlement) did not consist in alterations in the ancient customs and usages of the country affecting the rights of persons and property. It related chiefly to giving security to these rights."

Justice Rankin in *Emperor Vs. Probhat Chandra Barua* (I. L. R. 51 Cal. 504) observed: "Upon these materials it will suffice for my present purpose to notice two things. If we put aside *sair* or internal duties, and suppose that the Government had—say in 1798—imposed upon zamindars a new tax in respect of their estates with a new name and upon a new excuse, this would plainly have contradicted the true intent and meaning of the promises of 1793. The practice of inventing new excuses for new imposts was not an unknown feature of oriental history in 1793 and the zamindars may be taken with great certainty to have had it well in mind. But secondly, the true intendment of the Permanent

1. In the official reports of the decisions of the Sudder Dewany Court for 1848 (P. 460).

Settlement is trenched upon by the imposition of further taxes in respect of any part of a settled estate upon any tenure-holder, tenant or other person under the zamindar just as much as by taxes levied directly on the zamindar. I hold it plain on the face of the Regulations that if in 1796 Government had further assessed the lands it could not have claimed to be keeping its bargain merely because the cultivator or dependent tenure-holder contrary to all usage was to be assessed directly. The patnidar who had taken his estate on the footing of Regulation would have had as great a grievance as the zamindar."

Chief Justice Dawson Miller in *Maharajadhiraj of Darbhanga Vs. Commissioner of Income Tax* (I.L.R. 3 Pat. 470) stated in a clear language: "It is argued that the effect of the imposition of income-tax is not to increase the revenue or rent so payable, but it is clear, I think, that the imposition of such a tax is in fact to increase the revenue under another name. The Jama permanently fixed at the date of the Settlement was calculated upon a percentage of the rents and profits at that time derived from the ownership of the land. Income-tax is based upon the same rents and profits as they now exist, and it is impossible in my opinion to escape from the conclusion that a tax, under whatever name, upon the same sources of income would increase the duty payable under the name of revenue and which, by the Permanent Settlement, it was agreed, should then be fixed for ever."

Dawson Miller practically laid emphasis on the same line of contention which was put forward by Raja Joteendra Mohan Tagore (as he then was) in the debate in the Bengal Legislative Council on the Road Cess Bill, 1871. The Raja Bahadur in stating his case said: "It had been said that the Government had no intention whatever of breaking the stipulations of the Permanent Settlement, and a distinction had been attempted to be drawn between land revenue and land tax. He confessed that to the natives it seemed to be

a distinction without a difference; for so long as the demand was upon the land, and was to be recoverable as arrears of revenue, it mattered not under what name that demand was to be made; and so long as the landholders found that it took away so much of the profits, the enjoyment of which had been solemnly guaranteed to them, they could not but look upon the demand as an infringement of the promise made to them by Lord Cornwallis, and ratified by the British Parliament. Besides, the cess, the rate of which was to be gradually increased for other purposes, as it appears from one of the despatches of the India Government to the Secretary of State, was as much an addition to the "public assessment" permanently fixed, as any enhancement of the land revenue could be, for virtually the effect would be the same. It would be poor consolation to the zemindars to know that it was a cess and not an enhancement of land revenue they were called upon to pay when the fixity of the public demand on their lands would be in either way equally destroyed."

The minority decisions of the Full Bench Reference in *King Emperor Vs. Probhat Chandra Barua* (of Justice Mukherjee and Suhrawardy) clearly state the position, as envisaged by Regulation I of 1793. The decisions are: Although it is clear that the right to taxation generally was not given up by the Permanent Settlement, it is equally clear from the correspondence between Lord Cornwallis and the Directors of the East India Company, specially from Regulation XXVII of 1793 sec. 4, that income or profits from permanently settled estates were not among the items, the right to tax which was reserved. Whether a contribution is levied as revenue or as income tax both are demands of the State and when in assessing the revenue, a guarantee was given of its fixity, and a declaration was made that the balance would never be touched, to impose a further tax on the income or the profits is to take away that fixity and alter what was guaranteed

to be unalterable. The argument that only the revenue payable by the lands was fixed and not the entire demand of the State for all income or profits cannot prevail, inasmuch as profits from fisheries were taken into account.

The object of the Permanent Settlement Regulations was to ensure the improvement of agriculture and thereby the wealth of the country, by guaranteeing to the landlord exclusive enjoyment of the profits after deduction of a fixed revenue, and the exemption of agricultural income by the Income Tax Act is perhaps a continuation of the same policy."

Thus the spirit of the Permanent Settlement and the exposition of the same by eminent authorities clearly show that Jama is a tax on rent and any new demand upon the landowner of a further portion of what he receives from his ryot cannot but be an increase of that tax. The property in land being vested in the landlord, any addition to the land-tax, whether from the zamindar or the ryot, is an infraction of the Permanent Settlement. In spite of such authoritative interpretations, things have shaped in a way that cesses and other demands have been made on the profits of land from the permanently settled estates for the necessities of the State and the public but the sacredness of the Settlement has not been questioned, though its wisdom has been debated on several occasions. In fact, in Bengal, there are various statutes imposing taxes, direct or indirect, on the profits from land.

Regulation XX of 1817 imposed upon the Zamindars the duty of maintaining peons for the purpose of carrying the post from one police station to another. The liability was converted into a direct tax by the Zamindari Dak Cess Act of 1862 and all Zemindars, sudder farmers and other persons paying revenue to Government in respect of lands situated within the district were liable to contribute for payment of

the establishments required for the purpose of maintaining the Zamindari-daks. The Act is now, of course, repealed.

There is the Cess Act of 1880. Section 6 enacts that the Road Cess and Public Works Cess shall be assessed on the annual value of lands and on the annual net profits from mines, quarries and tramways and other immovable property, ascertained respectively as in the Act prescribed. The Cess Act is amended in 1934 resulting in important changes.

As regards the Bengal Municipal Acts. The earliest Act was Act XXVI B.C. of 1850; it was followed by the District Towns Act of 1868. The next Act is Act III B.C. of 1884 which empowers a Municipality to levy ten different kinds of tax, one of which is a rate on buildings, lands and holdings. This Act has been further amended in 1932.

The Embankments Act of 1882 empowers the Government to remove embankments and alter water courses for the purpose of protecting lands and to recover the expenses from the zamindars of the estates thereby benefitted or protected in proportion to the respective benefits derived.

The Drainage Act of 1880 empowers the local Government to frame a scheme for better drainage and to apportion the cost upon each landlord in respect of his improved land, such cost being the first charge upon the lands in question.

The Court of Wards Act of 1879 empowers the Collector to take charge under certain circumstances of the property of a proprietor and to apply part of the profits in paying for the expenses of management.

The Village Chaukidari Act of 1870 empowers the Village panchayet to levy for the payment of village Chaukidars a rate on every person owning or occupying a building in the village according to his circumstances and the property to be protected.

There is the Bengal (Rural) Primary Education Act of 1930 imposing cesses on the profits from land.

The Bengal Tenancy Act empowers the Local Government to order a record of rights and to recover from the landlords the costs of the operations as the Local Government may determine.

There are various indirect taxes—the Stamp Act, the Court Fees Act, the Probate Act and the Bengal Settled Estates Act.

Duties under the Stamp Act, though condemned by economists such as Adam Smith, Bentham, Mill, Hobson and others exist in our country and denote the duties on deeds and other instruments.

Under the Court Fees Act, a permanently settled estate or a definite share of it separately assessed and entered in the Collector's register is to be valued at ten times the annual revenue and the fees should be settled on that value. In the February Session (1934) of the Bengal Legislative Council, the Government have brought forward an amendment to value the subject matter of suits according to market-value.

The aforesaid legislations, most if not all of them, "may be justified as imposing taxes in return for services rendered, facilities offered or benefits conferred. In some of them reference is made to land or the income or profits arising or derivable therefrom as affording a basis for calculating the amount of the imposition. In others the imposition is no doubt an additional burden on the lands, or viewed in another way forms a deduction from the income or profits of the lands."¹

It may be mentioned in this connection that the cesses imposed for roads and public works and for other purposes

1. The minority decision of the Full Bench Reference, *King Emperor V. Probhat Ch. Barua* I. L. R., 54 Cal. 863.

stand on a different footing from the income tax on agricultural income that was imposed in 1860. The cesses are levied exclusively on those dependant on land but the income tax imposed in 1860 was levied on all classes. The Maharaja of Burdwan extended his support to the Income Tax Act of 1860 because that was a temporary measure and there was the ostensible purpose of stabilising the finances after the Sepoy Mutiny; the Maharaja's support grew also out of the feeling that the Administration which protected the property of the people should be supported in emergencies. But the Cess Acts are permanent measures and the Maharaja of Burdwan in 1870 explicitly stated: "I am deliberately of opinion that if the threatened cess were levied on the permanently settled estates, it would involve a direct infringement of the Permanent Settlement."

The exclusive character of cesses being levied on the rental value and the permanence of the measures are factors which militate against the unalterable nature of the Jama in Bengal. The benefits derivable from cesses extend to all classes while a section of the people is singled out for payment. It looks like a punitive measure and has no sanction in the canons of taxation.

These abstract criticisms may have no value when the cesses of various kinds are being paid by those dependant on land. But under the arrangement, the income-tax on agricultural income can have no room as long as the cesses stand: either of these must give way, at least that was the standpoint when the Road and Public Works cesses were imposed in the last seventies of the 19th Century. We find that both cesses and income-tax on agricultural profits contravene the Permanent Settlement. The cesses stand in spite of protests from the people of Bengal. The further taxation of agricultural income can never be introduced under the existing obligations of Regulation I of 1793. No Government have upto yet refused to obey the obligations.

CHAPTER IV

AGRICULTURAL RENT

What is rent? Rent is the consideration paid for the hire of land. In other words, rent "expresses the amount of money paid for the hiring of various properties connected with land."

A tenant hiring a farm is not a man hiring a house ; he is like a man purchasing a business on an annual payment of rent. Therefore, in the fixation of rent, many considerations are present before a tenant : he is to reckon the cost of cultivation, estimate the amount of produce and the price which it will fetch on sale, ascertain the quantity of profit, then he is to calculate within himself how much of the profit he can consent to surrender to the landlord of whom he borrows. The fixation of rent is a complex problem in as-much as the calculations by the tenants of all the above factors are subject to inexactitude and uncertainty because of the very nature of agriculture. In a manufacturing business, the cost of production, the expenses of raw materials, the charges it has to sustain, the general price of goods produced and the rate of profit are much the same in the same town and often in the same district. The calculation of profit may be made with more certainty. But in agriculture the unit is not the district, nor even the estate, but the individual farm. Every farm has special characteristics which exercise mighty influence on the cost of production, the amount of produce and the prices it will fetch, and the profit which will be realised. The variations in fertility, nearness to stations and high roads, distance from manures that have to be derived, tithes and local rates, accessibility of markets, wages, loaning operations,—all these have visible effects on profits. Thus the farm hired is a separate business by itself which brings forward points peculiar to

itself. Its profits, and consequently its rent, must be individually estimated.

Rent thus may be called a part of profit: a tenant first considers the produce, then the cost of cultivation, then the profit after the deduction of the interest on the capital invested in the business. The tenant before hiring a farm must feel that he will have sufficient profit and he would then agree to slice away a portion thereof as rent. The question that if rent is to be a larger or smaller part of profit is a different one but the fact remains that it is a part of it. Unless there is the possibility of profit, a tenant would refuse to hire a farm. So it can be said that in the case of rent, a tenant wields a great force. But the strength of the landlords lies in the fact that there is competition for lands which presupposes that the farm hired would give sufficient reward for the tenant's venture. The landlords and tenants may be called partners in a common business; they divide between them a common profit: "each earns more by performing his own part of the business well."

As profit varies from land to land, so should rent. There is no science which can determine a natural, definite and ascertainable quantity to be demanded as rent. Scientific determination of rent is a risky affair and of dubious solution. Science in forecasting the price of a thing, one year or two years or many years hence, takes an uncertain jump. Ricardo made the degree of fertility possessed by soil the scientific regulator of rent. But it is realistic economics that a fertile land may fetch shabby rent if there are high wages, bad transport, greater distance from manures, thin population etc., which are economically deterrent factors. Political economy cannot determine rent: it can only analyse the conditions and enumerate the forces tending to the determination of rent. It is competition which determines the right amount of rent. If rent be

insufficient, the landlord refuses ; if rent be higher, the farmer refuses. Competition brings about the real state. It is also to be noted that custom has a share with competition in fixing rent.

The motives that underlie the actions of men when bidding for the use of land are fundamentally the same as those that operate in determining the values of other useful things. The theory of rent is therefore an "attempt to indicate the way in which the theory of value works itself out when applied to the annual value of land."

Ownership is the cause of rent and possession is the effect of it. Rent is reached by bargaining between the landlord and the tenant. It is extremely difficult for an economist to tell what is fair rent or low rent : it is to be determined by the bargainers on the spot. Economists are to explain the methods : conclusions are to be arrived at by individual bargainers. Over and above competition and custom, there is the sense of value wielding a great force in the economic life of men. A land gathers higher rent if it is beautifully situate, freshened by healthy breeze, surrounded by pleasant atmosphere, inhabited by good neighbours, tenanted by the same family for generations, located in calm areas secured against invasion of mills and chimneys, dotted with historical associations etc. To suppose money as the sole factor in buying and selling is to make Political Economy untrue to human nature.

The so-called theory of agricultural rent is that the "rent of the farm is the difference between the value of its produce and the value of the produce of a farm of equal extent which is only just able to pay the expense of cultivation or in other words, which consists of land of the lowest degree of fertility which has to be cultivated to supply the wants of the community." If we take that the

rent of any particular piece of land is measured by the excess of the value of its produce over that of the produce of an equal area of land of the lowest degree of fertility, it follows that the rent of land depends not only on its own intrinsic fertility but also on the fertility of other lands. This serves to give the rent a fluctuating character. The land which serves as the basis of comparison may alter materially from time to time. Profit is dependent on many circumstances. Any circumstance affecting the profit affects the rent.

The rise of rent is possible if there is (a) increase of population;

(b) the agricultural progress tending to diminish the cost of production or improve communications or any thing which makes agriculture remunerative;

(c) increase in the prices.

The lowering of rent is possible if there is :

(a) the cultivation of other new lands having equal or superior advantages for bringing the crop to the market;

(b) the increase of importation of food at a greater proportionate rate than the increase of population;

(c) the deterioration of the output of land beyond the farmer's necessary share;

(d) the increase of manufacturing industry making agricultural vocation unremunerative and unattractive.

In the last case, the loss of agricultural rent will be more than repaid by ground rent paid for building leases.

“The increase in the efficiency of men, which results in more produce from the same amount of land and labour,

will, other things being equal, tend to reduce rents for, with the demand for produce remaining the same, increased supply will tend to lower the prices of produce. While this would be the first effect, lower prices would tend to stimulate population and in the long run increased efficiency will enable a growing population to encroach farther and farther down the scale to less and less productive land and bid higher and higher for the good land, driving rents higher than they could have been without the increased human efficiency."

The accumulation of capital may result in the increase of rents and the reduction in the supply of capital available for agriculture may reduce rents.

Dr. Taylor points out that differences exist among men as well as among the different grades of land which give basis for a special differential return in the form of profits to men and that competition may result in the decrease of one of these surpluses to the advantage of the other. If farmers and workmen and equipment increase more rapidly than land of the quality in use, competitive forces tend to increase rent at the expense of the return to the other factors.

There is an interesting point of view that if rent should increase after improvements made on the land by the tenants. If the conservative view is taken, it may be urged that when a tenant makes improvement operations on the land, he does so not exclusively out of his own capital but out of the co-operation of his own capital with the capital of landlords. The tenant has hired the land only, he had not enough capital to purchase it. It is the purchase which gives exclusive possession and it is this possession in which the ownership of land consists. Unless there is exclusive possession, the inherent qualities of the land and the situational advantages of the farm belong to the

landowner. Phosphoric acid, potash, lime, magnesia, sulphuric acid, nitric acid—these important constituents for the food of plants—all these energies, actual and potential, which the land possesses are of course let out to the farmer but they in fact belong to the landlord. The conservative school accordingly maintains that agricultural improvement by the tenant consists of two factors: first, the tenant's outlay and skill; secondly, the inherent qualities of the soil which belong to the landlord. This school as a logical corollary concedes the right of the tenant to receive repayment for his outlay in improvements with interests; the right of the tenant to be paid full value of his improvements is ruled out. "Under the strictest investigation and under the most accurate scientific valuation, the elements in all farming enterprise which belong to the owner and which the owner of land lends to a farmer are beyond all comparison greater in value than the elements which the farmer himself supplies in the conduct of his enterprise." The Liberal school maintains that the hirer of land like the borrower of the money uses the commodity at his own risk and has to bear any loss which his mistakes or misfortunes may cause. And as such he should be entitled to the whole profit. Every improver must have full fruits of enterprise, expenditure and skill.¹

Distinction between Rent and Revenue

The word "rent" has by now acquired a distinctive meaning. Even upto the early British rule, there was no distinction made between rent and revenue. The rent in

1. In *Adams V Dunseath* the Irish Court of Appeal held the view, advocated by the Duke of Argyll, that in agricultural improvements, the two factors viz., the tenant's outlay and skill, and the inherent qualities of the soil which belong to the landlord, should be taken into account and accordingly in fixing a fair rent, the tenant might be rented on a portion of his improvements.

English language is in reality an annuity with a charge on the land demised, because the tenures held at fixed rent and in perpetuity are really alienations and the alienees and all persons holding through them pay a fixed sum in perpetuity called rent, to the alienors and those claiming under them.

In enacting the Regulations of 1793, there was a distinction made between revenue and rent, revenue being used to mean the sum paid by superior landowners to the State and rent the sum payable to the superior landowners by those who hold under them. The Bengal Tenancy Act of 1885 defines rent as "whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land, held by the tenant." ¹

The distinctive use of revenue and rent in the manner as indicated implies a change of ideas "as to the legal effect of the transfer of property in the soil by means of grants in perpetuity." This change of meaning leaves the Zemindars paying revenue in the position of proprietors and the tenants paying rent distinctly in a subordinate position. It is an unconscious but complete recognition of the proprietorship of Zemindars, a recognition legally established by the Regulations of 1793. The Hindu theory was that the actual occupier was the master of the soil; the Moghul theory advocated proprietorship in the Sovereign in scorn of the actual occupier; the early British theory applicable in India was that the proprietorship was vested in the State but it could be transferred for a sum as land tax; but modern legislation made the rent-receivers owners of land and the

1. Under the Act, Government is a landlord with respect to Khas Mahals, and the amount payable to the State by a tenant with respect to Khas Mahals is therefore rent; if instead of fixed sum, a fixed amount of corn or any other product be supplied yearly for the use of land, that is rent.

rent-payers, though in occupation and incapable of being ejected, pay rent, not revenue, for the use and occupation only of the land, a conception absolutely modern, accentuating and clarifying the relative position of the two partners.

The Tenancy Act of 1885 has now made rent the first charge: under the Mahomedan law, the rent, rather the amount payable for the land, was not a charge but "personal obligation in the tenure-holders." The Rent Act of 1859 did not also make rent a charge on the tenure. Now, revenue and rent are no longer twin words: they are now distinct connoting distinctive rights and obligations of their own.

Growth of Rent-concept

The evolution of the conception of rent in Bengal is immensely interesting. Three contending forces such as custom, competition and legislation, have brought rent to the present stage. The King's share during the Hindu period had not the characteristics of rent, if modern notions thereof are to be taken into consideration. In the King's share, first, there was no element of contract, which is essential for western conception of rent, because the proportion of produce to be delivered by the cultivator was determined arbitrarily by the Sovereign; secondly, the Sovereign during that period did not lay any claim to property in the land and "the grain payments answered to the description of a tax, rather than to that of rent."

In view of this interpretation, the germ of rent could be said to have existed in the Hindu village communities of the landlord type which became extant in Bengal where the cultivators paid, over and above the King's share, an additional share to the proprietary body. This additional share

paid in kind, and the amount of which was regulated by custom, may be called rent. The arbitrariness in the determination of the amount of share was not there, as custom, grounded on considerations for the tenant's caste, the quality of the soil, the proximity to marts etc. attempted to do justice to the cultivators. In this connection, it must be pointed out that though the cultivators had to pay, over and above the King's share a certain proportion to an intermediate interest, still there was no severity in that customary rent. That was a period when rack-renting was not possible because ryots had to be fostered and coaxed for the use and occupation of the land. That was a period when there was no competition for the land and many culturable lands remained waste. That was also a period when there was no need for taking to the worst lands and to the improved means of agriculture. At such a period, the question of rack-renting and oppressing the ryots could not arise as they, at the first speck of oppression, could remove to other culturable lands; there were more lands and less tillers. That was a golden age for the ryots and that was the reason that the Khudkhasts (resident ryots, as opposed to the Paikasts or non-resident ryots) acquired rights which could hardly be distinguished from the proprietary rights.

During the Mahomedan period, the growth of rent concept found a set-back. The Mahomedan rulers were not in favour of middlemen standing between the Sovereign and cultivators. Even if there was an intermediary, he used to collect revenue on behalf of the Sovereign and he had not the status of a landlord. Therefore, whatever dues he might have intercepted, that had not the character of rent, rather that was his fee for collection. In spite of this, there were landlords existing here and there but those were cases of usurpation and as such it may be said that rent in the proper sense of the term found no room in the revenue

system of the Mahomedan period. But with the decline of the Moghul power, the system of farming out the revenue came into vogue. Thus, intermediaries grew in abundance and in the absence of strong central power, they came to collect illegal cesses, over and above the fixed rate of rent. Rent was so overlaid with illegal cesses that the rights of the cultivators were rendered nugatory.

During the period of Company management, competition began to influence rent in Bengal. After the great famine of 1769-70, it was felt urgently necessary that the waste lands should be cultivated but there was dearth of peasants, as they were greatly decimated by the famine. The Government forced the zemindars to 'court' the peasants to undertake the cultivation of waste lands. And in this matter of settling ryots on waste and uncultivated lands, the zemindars could not afford to be whimsical, as it is said, that "the resident cultivators had only to migrate a few miles to get land at low rates of rent". The cultivators could give their own terms and the zemindars had to accept the terms, even if they were lower than customary rent. For the first time, the law of demand and supply came to be a factor in the settlement of rent. During this time, a class of ryots, known as vagrant ryots, grew up : they held lands at lower rent. They settled with one zemindar for one season ; if the zemindar tried to increase rent, they migrated to a different place and settled with another zemindar on a lower rent than what was customary. These vagrant tenants reduced the customary rent and the law of supply and demand worked with vengeance on the zemindars. Let it be noted in this connection that the Company did not disturb the system of zemindars which flourished with the decline of the Moghul power. The exactions of zemindars subsided with the Company management and rent instead of going up beyond the level of economic rent settled down to the customary rate.

During the later British period from 1859 onward, there was the reign of law. Rent was settled by the Legislature on, customary rate and the chances of enhancement were gradually reduced to nil. Series of legislations brought about this conception of rent, regulated by custom.

In this connection, it would be worthwhile to mention that though the unculturable waste lands had been brought under cultivation, there was a keen demand for lands because of the growth of population and the need for improved means of agriculture was being felt to raise sufficient food for the people: that was a situation wholly different from what prevailed during the Hindu period when the Khudkast ryots acquired valuable rights and paid legitimate rents. But it would be interesting to note that even in the situation, noted above, the rent is extremely low, the grounds of enhancement are fair and the occupancy ryots have also acquired valuable rights. If the situation were left to the play of economic forces and there were no interfering legislations, it may be said that the rents would have jumped up, the grounds of enhancement would be less stiff, and the occupancy ryots would have acquired less valuable rights. The competition for lands in Bengal is very keen, first, they are fertile, and secondly, there is a vast population. The keenness of competition is evident from the prices offered for the lands. The present depression with consequential fall in the prices of lands should not be confounded with misunderstanding the economic forces.

Protection of Ryots

To understand the implications of agricultural rent in Bengal, we must first of all disabuse our minds of the wrong impression that ryots are suffering in the matter of rent at the hands of landlords from early British rule. Since the Company took the entire care and management of the

revenues as Dewan, there were serious attempts for the protection of ryots. When the revenue was farmed for five years in 1772, the farmer was prohibited from receiving larger rent from the ryots than the amount stipulated for in the pattaahs. Abwabs and cesses were prohibited: Nuzzurs and salamees were abolished; usurious lending to ryots was directed to be stopped. The Company's efforts towards the welfare of ryots were not crowned with much success, but efforts, genuine, were there.

The Decennial Settlement was the first serious bold attempt for the protection of the revenues and the ryots. Before that, there were quinquennial and annual settlements—all for the protection of revenues and ryots. Because in every settlement the Company ensured its position in the matter of revenue and curbed the powers of zemindars. In the Mahammedan times, the rulers entered into agreement with the zemindars without reference to the ryots: they only thought of their revenues and there the zemindars showed some eagerness for agreements as they in their turn could be free to exact beyond the asul. But the Company were particular in seeing to the welfare of ryots and augmentation of revenues and as such the zemindars had no interest in settlements, rather settlements were thrust on them.

The Decennial Settlement was not silent after striking out an arrangement in the matter of revenue (an ensured supply of which was a political necessity with the Company's Administration); it went to the length of providing that the zemindars assessed by Government would equally and impartially distribute the total assessment on all the lands, contained in their zemindaries "according to the rent received from them and to render a full record of such distribution". If any village was omitted, the Government siezed on it; if wilful partiality was proved, the land-holder would be fined. It was clearly provided that the zemindars

in every engagement with the under-renters must be specific as to the amount of rent and conditions of it and "all sums received beyond the amount specified are to be repaid with penalty of double the amount." The following restrictions prescribed by the Decennial Settlement¹ were all for the protection of the ryot in the matter of rent :

(1) No person contracting with zemindar shall be authorised to take charge thereof without an amalnama, or written commission signed by the zemindar;

(2) the land-holders are to revise the abwabs in concert with the ryots, and to consolidate them with the assul;

(3) no new abwab or mathoot is to be imposed under penalty of three times the amount;

(4) the rents shall be specifically stated in the pottah;

(5) every zemindar shall prepare a suitable form of pottah and submit it to the Collector who, after approval thereof, shall notify to the ryots that such pottahs may be obtained and no other form of pottah shall be allowed;

(6) a ryot whose rent has been ascertained and settled is entitled to a pottah, and if refused, the land-holder will be fined;

(7) existing leases are to hold good unless granted by collusion or without authority;

(8) no landholders or farmers shall cancel the pottahs of the Khoodkhasht ryots except on proof of being obtained by collusion, or that the rents of the last three years were below the rates of the pergunnah nirikbundy;

¹ 'Phillips' Tagore Law Lecture on the "Law of Land Tenures in Lower Bengal."

(9) a patwary shall be established for every village by the proprietor under penalty of fine; the patwary is to record the accounts of the ryots;

(10) receipts for rents are to be given to the ryots under penalty of double the amount;

(11) if any village or district should be affected by inundation or other calamity, causing ryots to desert, the rents of the absconding ryots shall not be demanded from those remaining;

(12) the land-holders and renters are to adjust the instalments of rents payable, according to the time of reaping and selling the produce, and Collectors are to enforce this provision.

From the Decennial Settlement onward, it has been the deliberate aim of the Legislature to see that the ryots do not suffer in any way for rent. The protective measures from 1793 to 1869 can be gathered from the following :

(1) The Decennial Settlement provided for authorised form of pottahs to the ryots. The rent was settled to be an entire sum consolidating the abwabs lawfully chargeable with the assul, thus blocking the avenues of other exactions and abwabs.

(2) Under the Permanent Settlement scheme, the landlords shall not cancel the pottahs of Khoodkasts except on proof that they were obtained by collusion, or that their rents for 3 years before the Settlement were below the pergunnah nirikbundy, or that they had obtained collusive deductions from their rents, or upon a general measurement of the pergunnah for equalising and correcting the assessment.

(3) The Permanent Settlement provided that all leases to under-farmers and ryots made before the Settlement and

not contrary to any Regulation, were to remain in force, unless proved to have been obtained by collusion or from unauthorised persons.

(4) The Permanent Settlement made the following provisions for the ryots: abolition of extra cesses and abwabs; no power to cancel bonafide pottahs,¹ fixity of tenure and fixity of rent rates secured; Canoongoes and Patwaris to prevent oppression of the persons paying rents; landlords to specify in writing the rent payable by ryots at pergunnah rate, the dispute, if any, being determined in the Civil Court of the Zilla in which lands were situated.

(5) Though the provisions for compulsory preparation of pottahs were rescinded by Regulation V of 1812, they were later on restored when section 2 of Act X of 1859 and Sec. 2 of Act VIII of 1869 entitled every ryot to a pottah from his landlord containing the following particulars: the quantity and boundaries of the land, the amount of annual rent, the instalments in which the same is to be paid, the special conditions of lease, the proportion of produce (if the rent be payable in kind) to be delivered and the time and manner of delivery.

1. It is maintained that pattah regulations proved inoperative because they were opposed to the interests of both the landlords and ryots. The landlords could nullify the objectives of pattah by inserting therein exorbitant rates. The ryots did not at first appreciate pattahs because they thought pattahs would not stop the collection of abwabs; secondly, "as a rule they held more lands than they were rated for in the village registers" and they shrank from an enquiry into the exact amount; thirdly, "the acceptance of the 'pattah' meant the perpetuation of the rather fictitious pargana rates which were considerably in excess of the economic rent which the landlords could secure by contract under the then prevailing condition." Thus the cultivators themselves reluctant to avail of the Pattah regulations.

(6) The Pattah question¹ was thoroughly settled by the Acts of 1859 and 1869 which made the following provisions :—

(a) ryots at fixed rates of rent (which have not been changed from the time of the Permanent Settlement) are to receive pottahs at those rates; (b) ryots having rights of occupancy are to receive pottahs at fair and equitable rates; (c) ryots not having rights of occupancy are to receive pottahs at such rates, agreed between landlords and ryots.

(7) The rights of Khoodkasts are respected by the following Regulations: (a) Regulation VIII of 1819 enacted that no purchaser at a public sale for arrears of rent of an intermediate tenure was entitled to eject a Khoodkast ryot or resident and hereditary cultivator, or cancel bonafide engagements, and provisions regarding sending *sezewal* to attach lands and collect rents in case of default were not applied to such ryots; (b) Regulation XI of 1822 respected their rights by not ejecting and not demanding higher rent by purchaser; (c) Act X of 1859 did not entitle purchasers to eject such ryots or enhance rents of such ryots.

(8) For speedy realisation of rents, the landlords were given powers under Regulation VII of 1799 to seize the person of the ryot in case of default and under Regulation V of 1812 to distrain the ryot's property but they were rescinded by Act of 1859 which specified the grounds of enhance-

1. Pottahs are of various descriptions: Mokurreree, permanent or fixed; thika, specific; Shurh Mouzah, at the village rate; Shur Pergannah, at the ~~p~~ergunnah rate; Bilmookta, adjusted; Khoodkast and Paikasht; Nowbad, for newly cultivated lands; Jungleboory, for clearing woods; sayer, of the sayer duties; Khalaree, for salt manufacture; Shuhd, for making honey; for making wax. Persons granting pottahs would get a Cabooleut, "a counter-part engagement in conformity with the tenor of the pottah."

ment of rent, transferred rent suits to civil courts, abolished the landlord's power to compel the attendance of ryots at their offices and modified the power of distraint.

(9) The *Istemrardars* or *moḡurrereedars* who had held at a fixed rent for 12 years before the Decennial Settlement were protected from enhancement, and in like manner, by Act X of 1859, a ryot holding land for a period of 12 years or upwards, could not be ejected. A new species of right, called an occupancy right,¹ was created by Act X of 1859, re-enacted by Act of 1869 in which possession and cultivation of land and payment of rent were all that were necessary to invest the ryot with the said right, an expression used for the first time by the Legislature in 1859.

The Legislature did not stop at the measures catalogued above in fixing the security of tenure and rent.² Then came the Tenancy Act of 1885, the Magna Charta of the rights of the ryots. This Act was further amended in 1928 which gave tangible rights to ryots under various headings and all sections relating to distraint of crops were rescinded. Thus the last resource of the landlords in the matter of exercising their proprietary rights was taken away.

1. "Section 6 of Act X of 1859 laid down—"Every ryot who shall have cultivated or held land for a period of 12 years shall have a right of occupancy in the land, so cultivated or held by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same. Section 7 further laid down that nothing in section 6 shall be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and a ryot, when it contains any express stipulation contrary thereto."

2. "The principal faults of Act X of 1859 have been said to be that it placed the right of occupancy which it recognised in the tenant and the right of enhancement which it recognised in the landlord, on a precarious footing. It gave, or professed to give, the raiyat a right which he could not prove, and the landlord one which he could not enforce."

These legislative interferences are made on the strength of the declaration of the Governor-General in Council in the proclamation of the Permanent Settlement which stated—"it being the duty of the ruling power to protect all classes of people and more particularly those who from their situation are most helpless, the Governor-General in Council will, whenever he may deem it proper, enact such Regulations as he may think necessary for the protection and welfare of the dependent talukdars, raiyats and other cultivators of the soil."¹

Enhancement of Rent

The enhancement of rent is a question of absorbing interest and herein also we find that with the process of time, the landlords' powers, inherent in proprietorship, have been mercilessly curbed.

The enhancement of the ryots' rent in Mahommedan times took place in a peculiar manner. The zemindar's settlement with the ryots was annual and the zemindar used to add the subsequent abwabs and exactions to the *assul* or original and distribute the enhanced rate "according to the quantity and quality of land held by the ryots, or the estimated or actual crop." The other way was to assess at a fixed rate for the bigha, irrespective of the crop, including abwabs and exactions. As the settlement was annual, the enhancement

1. "The interference, though so much modified, is in fact an invasion of proprietary right and an assumption of the character of landlord which belongs to the zemindar; for it is equally a contradiction in terms to say that the property in the soil is vested in the zemindar and that we have a right to regulate the terms by which he is to let his lands to the ryots, as it is to connect the abwab with discretionary and arbitrary claims."—Sir John Shore. Marquis Cornwallis held a different opinion.

could be pushed on more smoothly.¹ It is true of course that the zemindar was in his assessment controlled by custom but there were ways of circumlocuting custom. The zemindars generally settled through a village headman and in this wise they cheated the ryots with scant consideration for village "*reybundeess*" (records of customary rates).² The Zemindars themselves settled with the Government for a number of years upon the basis of the "*hustabood*", a comparative statement of the value of the land, prepared by the Canoongoes and originally founded upon Todar Mull's investigations. The zemindars settling the amount of revenue with the Government distributed the same among the ryots

1. Sir George Campbell maintains that Todar Mall's assessment is enhanced in the following way: in spite of prohibitions, illegal cesses were from time to time added on and gradually annexed to the customary rate. If there is resistance by ryots, a compromise on rate more than the assul is effected. Then a further increase, further resistance and further compromise on a further enhanced rate; when the majority of ryots consent to a compromise, an enhanced local rate is established and the other remaining ryots are raised to that standard on the plea of customary rates prevailing at that time in that neighbourhood.

2. The customary rates were ignored; the great body of cultivators in Bengal sank into a position forming no part of the village organisation, so they could be extorted; even customary rates were consolidated with abwabs and cesses; the threat of measurement of land intimidated the ryots into the submission of assessment beyond customary rates; the Canoongoo's office which kept records of rates fell into disuse; the ryots were averse to receiving pottahs, so the rates could easily be enhanced; the underfarmers (especially after Jaffier Khan's time) made more exactions than the Zeminders in the enhancement of ryot's rent; in case of plenty of crops, the Zeminders and mercenary underfarmers exacted rent in kind, though they had previously contracted for it in money, and conversely, and if the ryots were remiss in paying, they quartered their sezawuls and even they removed ryots to bestow lands upon those who would agree to pay enhanced rates.

and their allowances and higher rates that were later on assessed on the ryots were justified on the ground that in case of failure of crops, the stipulated amount of revenue could not be held back. This was the original ground for necessitating a difference between the ryot's and zemindar's assessment whereas in fact the ryots were scarcely excused, either for flood, famine or failure of crops. Moreover, the ryot's burden heaped up with every settlement on the rubbish of zemindar's exactions and abwabs,¹ the zemindars' receipts having little connection with the ryot's rent.

It may be mentioned that the ryots long continued to pay in kind. Akbar's attempt to substitute a money payment for a payment in kind was only partially successful in Bengal. An equal division of actual crop between the zemindar and ryots was very common; with the employment of a zemindar, the payment in kind fell into disuse. This system was oppressive to the ryots—payment in money came into vogue.

Under the Company's management, the question of enhancement of rent took another shape. From 1769 onward the Government were positively mindful of the protection of the ryot's interest. In an anonymous work, the *Zemindari Settlement of Bengal*, it was maintained that the ryots had "a general right to an absolutely unchangeable rate of

¹ In Mahammedan times, the original plan was that the Zemindars would receive from the ryots the amount for which they were responsible to the State; they of course got some allowances for collection expenses. But in course of time, Government made agreement with landlords for a lump sum without reference to the exact amount collected from the ryots for the year. That opened the door of exaction, and this process was responsible for the fact that the amount payable by the landlords was looked upon as a tax and the landlords' receipts were treated as something different though originally and necessarily based upon the ryot's assessment.

payment which it was intended to make permanent and unalterable just as much as it was to fix the revenue of the zemindar." That was an absolutely exaggerated statement:¹ rents were thought to be enhanced not arbitrarily but fairly and justly. They could be fixed legally and justly from time to time. The zemindars had then clear powers of enhancement and in their powers they were supposed to be guided by established perganna rates which in fact did not exist.² The Parganna rate at most then meant that a rate, as fixed at the last authoritative assessment was known and was the standard. It is claimed by Hunter that the Parganna rates in Bengal since 1770 were in excess of the economic rent.

Regulations of 1793 put a stop to abwabs but did not extinguish the landlords' power of enhancing the rent. One half of Bengal was waste in 1793 and the waste lands could be let by the zemindars on their own terms. Regulation IV of 1793 gave the zemindars power to recover rent at the rates offered in the lease, whether the ryot agreed or not and the "zemindars were thus enabled to claim any rates they pleased, to distrain for rent at those rates and to put on the ryots the onus of proving that the rates so claimed were not established rates."

From 1793 to 1858, the landlords were able to multiply the rent-roll by four times and according to Hunter the increase in the yield of the estates in 1812 since 1793 was estimated at 36 p.c. The rent-roll jumped up, not that the

1. This statement has been emphatically challenged by Beaden Powell and he gives reasons categorically to prove his viewpoint. (p. 625-27)

2. "At present no uniformity whatever is observed in the demands upon the raiyats. The rates not only vary in the different collectorships but in the parganas composing them in the village and in the lands of the same village, and the total exacted far exceeds the rates of Todar Mal."—Sir John Shore.

landlords were vexatiously exacting but that the peace in the country brought about a general prosperity resulting in cultivation of waste lands. The growth of population was responsible for the fact that the competition for lands was evident among the raiyats. And at a period when there was competition for lands and when there was no haftam Regulation of 1799 giving unrestricted power of distraint to landlords, the Rent Act of 1859 was passed which for the first time methodically tackled the question of enhancement. Section 17 of the Act X of 1859 provided that ryots having a right of occupancy were not liable to enhancement of the rent except on some one of the following grounds viz., that the rate of rent paid is below the prevailing rate, that the productive powers of the land or the value of produce have been increased otherwise than the agency or at the expense of the ryot and that the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent had previously been paid by him. Under the same Act, the occupancy raiyat was entitled to claim an abatement on the grounds, namely, that the area of the land has been diminished by diluvion or otherwise, that the value of produce or the productive powers of the land have been decreased by any cause over which the ryots had no control, and that the quantity of land held by the ryots has been proved by measurement less than the quantity for which rent had been previously paid by him.

Section 13 of the same Act provided that "no under-tenant or ryot who holds or cultivates land without a written engagement or under a written engagement not specifying the period of such engagement or whose engagement has expired or has become cancelled in consequence of the sale for arrears of rent or revenue of the tenure or estate in which the land held or cultivated by him is situate, and has not been renewed, shall be liable to pay any higher rent for such land than the rent payable for the previous year," unless

a notice shall have been served upon him as prescribed in the section "specifying the rent to which he will be subject for the ensuing year, and the ground on which an enhancement of rent is claimed." A ryot's rent can only be enhanced upto a reasonable rate and if the terms of pottah exclude enhancement, rent cannot be disturbed.

The Act specifying the grounds of enhancement of rent in reality curtailed the landlords' powers; it confined them within the bounds of recognised provisions. The Act, on the other hand, gave new rights to the ryots. Since 1859, the enhancement of rent could not take place except under a suit in the Act and the ryot was entitled to a previous notice of enhancement and of the particular ground on which it was demanded. And the ryot might contest the demand at his option by a suit or in answer to a suit brought against him to recover rent at the enhanced rate. "A claim to enhance assumes the existence of some right of occupation in the tenants." When the landlords are directed by the State in the matter of enhancement or abatement of rent, a situation is contemplated which is not warranted by the existence of the Permanent Settlement of 1793. The situation gives rise to two anomalies, first, the landlords who are declared as the proprietors in Regulation I of 1793 suffer a great positive encroachment on their rights; second, the concept of rent in Bengal is fundamentally changed. The landlords suffer because their proprietary rights are curbed to the extent of utilising any other reasonable grounds than the ones mentioned in the Act of 1859 in the enhancement of rent: the concept of rent is changed because the rent is no longer the "surplus profit of capital applied to agriculture or that it depends immediately upon, or is regulated by, the profits of capital, but that it is such a proportion of the produce of the soil, as the Government may from time to time determine." I do not mean to suggest that rent in Bengal has ever been allowed to follow western theories;

but rent instead of being fashioned by competition or even custom was decided to be determined by Government—a position hardly commensurate with the proprietary rights of landholders. The Rent Law Commission in their report (1880) said: "If it be asked on what principle Government should determine this proportion—what share shall be considered fair and equitable—our answer is, such a share as shall leave enough to the cultivator of soil to enable him to carry on the cultivation, to live in reasonable comfort, and to participate to a reasonable extent in the progress and improving prosperity of his native land." This theory of rent can certainly not be applied without repudiating the Agreement of 1793¹ but the Government accepted the theory and decided to start with the presumption that the existing rents were fair and equitable.

In this connection, I would like to mention that the Government asserted their right to keep the rents of ryots within a recognised limit but this excellent procedure was not adopted by them in regard to estates which were liable to settlement. Under Regulation VII of 1822, the Revenue

1. Ashutosh Mukherjee in criticising this conception of rent in Bengal said (in an article in *Calcutta Review*, 1880):—"The Bengal Government must again assume the character of owners of the soil before they can, with justice to landholders, take upon themselves to determine authoritatively that the rent now payable by the ryots shall not exceed the amount which may leave them enough to maintain themselves and their families in reasonable comfort, that is to say, in a style which from time to time may to the Bengal Government, seem meet. It is argued that the Government of 1793 never intended to abdicate the function of determining the proportion of the produce payable by the ryot,—a function cast upon the Government by the ancient law of the country. But by the ancient law of the country the proportion of the produce payable by the ryot was payable to Government itself; it was not rent in the modern conception of the term, but revenue."

officers were a law unto themselves and they made enhancements of rent in their settlement work in pursuance of no recognised code of equity; there was also no possibility of resorting to civil courts to contest the amount of enhancement. The provisions of the Act X of 1859 and of the subsequent Act VIII of 1869 applied to settlement proceedings by Government as well as to the proceedings of private landholders and that each ryot was entitled to previous notice of enhancement and of the particular ground on which it was demanded. The ryots could contest the demand. The Government officers felt embarrassed by these provisions and though they were deaf to the clamour of the landholders, the Government made further amendments in regard to settlement proceedings. Act III of 1878 while protecting the ryot from enhancement except on the grounds specified in section 17 of Act X of 1859 or of Section 18 of Bengal Act VIII of 1869 enacted that rent enhanced by a settlement officer should be deemed to have been correctly enhanced until the contrary was proved and the ryot was precluded from contesting his liability to pay unless he did so by a suit instituted within 3 months from the date of the service of the notice of enhancement. And a notice to attend and sign the Jumma-bandi was to be deemed a sufficient notice under the Rent Law. The Government were not satisfied with this: they passed another Act VIII of 1879 with reference to the settlement,¹ which made interesting provisions in the interest of Government:—

1. "The Act of 1879 is not applicable to all the estates belonging to the Government, nor does it apply exclusively to such as are in the possession of Government. The Act obviously can be applied to no permanently-settled estate but only to such as are liable to settlement and as regards these it is equally applicable whether the estates belong to the Government or private zemindars and are in actual possession of their proprietors"—Judgment by Hon. Justices Tottenham and Norris in the Calcutta High Court in connection with the Midnapore Ryot's Case (1884).

(a) Section 4 of the Act gets rid of all notice sections of the rent-laws and of the option enjoyed by the ryots as to the mode of contesting enhancement.

(b) Section 6 prescribes the grounds on some one or other of which, and not otherwise, the settlement officer may record a higher rent as demandable from any ryot having a right of occupancy than the rent which was previously paid by him.

(c) Section 9 provides that whenever a higher rent has been recorded as demandable from a ryot, the settlement officer shall cause to be published a copy of Jummabandi or extracts therefrom, specifying in respect of each such ryot the rent recorded as payable by him and the clause or clauses of section 6 under which the rent is enhanced.

(d) Section 10 provides that every ryot shall be liable to pay the rent recorded as demandable from him, unless it shall be proved, in a suit, instituted by such ryot within four months after the publication of Jummabandi to contest it, that such rent has not been assessed in accordance with the provisions of the Act.

(e) Section 11 provides that in all suits so instituted, the court shall, if it modifies or sets aside the rent recorded, proceed to determine the rent payable by the plaintiff in accordance with the Act.

(f) Section 14 provides that the Act would apply to all Settlement proceedings under Regulation VII of 1822 which have been confirmed after the commencement of the Act of 1878.

Settlement officer is given large powers under the Act in regard to enhancement of rent whereas the land-lords of permanently-settled estates are robbed of their rights and curbed in their enjoyment of their lands. The Midnapore

ryots' case in 1884 showed that the Government in the exercise of its paramount powers actually ejected an ancient zemindar from the temporarily-settled parts of his zemindary, because he refused, or was unable, to exact from the ryots temporarily-settled a higher rent than that paid by those of the ryots who enjoyed the protection of the Permanent Settlement, whereas in the year 1885, the Government passed the Tenancy Act making protestation to the effect that the hardships endured by the ryots in consequence of the Permanent Settlement required further protection at the cost of inherent rights of the zemindars under the Agreement of 1793.

The Government repealed the Bengal Act VIII of 1879 and in its place substituted the procedure under Chapter X of the Tenancy Act of 1885 for the settlement of rent and revenue in all cases in which a survey was being made and record of rights was being prepared. "Regulation VII of 1822 is, however, still in force. The record framed under the Regulation Law is merely a register of existing rents on account of these drawbacks. The Regulation is now seldom resorted to, except for the settlement of lands which are being assessed to rent for the first time, as for instance alluvial accretions and island churs on which tenants have not yet settled."

The Tenancy Act of 1885 brought the question of enhancement of rent to a scientific basis which definitely curbed the powers and privileges, given unto the landlords by the Regulations of 1793. Section 29 of the Tenancy Act states that the money rent of an occupancy-raiyat may be enhanced by contract but a contract to pay more than 2 annas in the rupee is void and that the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of contract. Section 30 states that the landlord may enhance the rent by suit on one or more of the following grounds, (a) that the rate of rent

paid by the raiyat is below the prevailing rate ; (b) that there has been a rise in the average local prices of staple food-crops¹ during the currency of the present rent ; (c) that the productive powers of the land have been increased by an improvement, effected by, wholly or partly, at the expense of the landlord.

First, about the prevailing rate. Prevailing rate generally means the customary or pargana rate. It means the rate actually paid and current in the village and not the average rate. The late Justice Dwarka Nath Mitter observed that "prevailing rate" meant the "rate paid by the majority of the raiyats in the neighbourhood."² The duty of a judge, when dealing with a case based on this ground of enhancement, is not to determine the prevailing rate, but to find out strictly the rate which has adjusted itself and is actually paid as "nirik" by a very large majority of ryots".³ Thus

1. The vagueness of the expression "the value of the produce" in Section 17 of Act X of 1859 is avoided in the B. T. Act of 1885 by the words, "rise in the average local prices of staple food crops".

2. Where it is found that there is no one prevailing rate and that ryots holding land in the village of similar description and with similar advantages pay rent at varying rates, the lowest rate may be taken and the rent of defendants may be enhanced upto that limit (*Alep Khan V. Raghunath* ; *Lalit Moer V. Hit Narain*). In ascertaining the prevailing rate, regard must be had to the rent paid by occupancy ryots holding similar lands in the whole village or in neighbouring villages and not to the rent paid by some of them only. (*Ramju Ram V. Ram Kumar*).

3. How to find out the "prevailing rate". Suppose the rates at which land of a similar description and with similar advantages is held in a village are as follows:-

Bighas			at		Rs.	As.	P.
100	"	...	1	0	0
200	"	...	1	8	0
150	"	...	1	12	0
100	"	...	2	0	0
150	"	...	2	4	0

Rs. 1-12-0 is the prevailing rate, because 400 bighas or more than half are held either at this or a higher rate.

the principle that is accepted is that rent in our province is customary and not competitive. In the fixation of the customary rent, the following elements are taken into consideration: the quantity of land, the productive power of land, the average value of the produce in or near the locality and the class to which that raiyat belongs.

Secondly, a rise in the prices of food-crops.¹ This increase must be permanent i. e., a steady and normal increase and not one that fluctuates in a violent and uncertain way, and is affected by extraordinary causes, not likely to last. Section 32 lays down that the Court shall compare the average prices during the decade immediately preceding the institution of the suit with the average prices during such other decade as may appear equitable and practicable to take for comparison, and that the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decade bear to the average prices during the previous decade taken for purposes of comparison, provided that in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period, in order to cover the probable increase in the cost of production. A rise in the prices of agricultural produce may be caused, (a) by an increase in the demand for food grains on account of increase in population; (b) by an increase in the demand for food-stuffs and raw materials on the part of other countries (as evinced by expansion of export trade); (c) by a continual fall in the purchasing power of the rupee.

1. Rise in the prices of agricultural products, other than food-crops, such as jute, tobacco etc., is to be enjoyed by the rayats unhampered by any distant chance of its being shared by the zemindars.

Thirdly, an increase of the productive powers of the land¹. This clause provides that the landlords would be entitled to the rent at the enhanced rate only so long as the improvement might last ; so a time must come when the rent would have to be reduced to the original rate. Consequently, the enhancement should include a sum in addition to the interest payable upon the capital spent ; otherwise, if only interest is allowed, the landlord's capital would be lost to him after the lapse of a few years (Ganes V. Lachmi). Section 33 lays down that in determining the amount of

1. In every suit for enhancement on the ground of increase in the productive power of the land held by the ryot, the burden is on the landlord to prove that it is not due to the agency of the raiyat. If a rayat convert at his own cost and labour arable land into a garden, which yields larger income, or if he improves ordinary arable land by manuring, thereby making it yield crops like tobacco, or potato, the landlord is entitled only to the rent of the land as it existed before the improvement. When a raiyat brings waste land into cultivation, he is liable, after the "russad" period is over, to pay at the full pergannah rate for the cultivated land. But if the land which he originally obtained required special cost to make it culturable and the rayat had to spend more than ordinary labour and capital to make it good arable land, the landlord is not entitled to any benefit from the improvement. If the rayat has impressed upon the land a character it would not naturally have, the landlord is not entitled to ask for enhancement. Where a raiyat has dug a tank, planted an orchard at his cost or erected a distillery, it is the raiyat's agency and not the landlord's that has improved the land (S. O. Mitra's Tagore Law lecture on the Land Law of Bengal.) The Chief Justice Garth opined in "Obhay Chunder Sirdar and Radha Bullath Sen" that the rent of lands used for orchards should be liable to enhancement or abatement from time to time in the same way as lands used for other kinds of culture because the growth and productiveness of orchards, apart from certain amount of extra care and attention from the ryots, depend far more upon the quality of the soil, and the fertilising influence of the season than upon the labour of the ryot.

The B. T. Act requires the registration of an improvement and the rules are also laid down therein.

enhancement on the ground of landlord's improvement, the court shall have regard to the increase in the productive powers of land caused by improvement, the cost of the improvement, the cost of the cultivation required for utilising the improvement and the existing rent and the ability of the land to bear a higher rent. Section 34 lays down that the court may enhance the rent claimed on the ground of increase in productive powers due to fluvial action, to an extent fair and equitable but not so as to give the landlords more than one-half of the value of the net increase in the produce of the land.

It is important to note that with all these grounds for the enhancement of rent, section 35 lays down that the court shall not in any case decree any enhancement which may under the prevailing circumstances be unfair and inequitable. Now the question that comes to the fore is what justification could there be for the repeal of the provisions for enhancement of rent. In deciding the equity of the provisions about the enhancement of rent, the provisions which are, as we have seen, hedged in with many conditions favourable to the raiyats, we shall have to take into consideration the rate of rent, paid by the raiyats. The rent in the Bengal delta, it must be noted, is not "economic rent" which is, as defined by Malthus, "the portion of the value of the whole produce, which remains to the owner of the land after all the outgoings belonging to its cultivation, of whatever kind, have been paid, including the profits of the capital employed, estimated according to the usual and ordinary rate of agricultural capital at the time being." In 1865, a Full Bench of the Calcutta High Court in the Great Rent case rejected the doctrine as held by Sir Barnes Peacock, that the rent in the delta was economic rent. By "fair and equitable rent" which the raiyat is bound to pay, they meant as "that portion of the gross produce calculated in money, to which the zemindar is entitled under the custom of the country". Thus the rent is

controlled by custom and not competition.¹ The essence of customary rent, as is well-known, is the price of a definite share of the produce, an average of the produce and its average selling value. If we examine the rate of rent paid by the occupancy ryots, we shall find that the rate is extremely moderate and decidedly below the economic rent.

Statement of the proportion of occupancy ryots' rent to average gross produce per acre.

District.	Average gross produce per acre.	Average rate of rent of occupancy ryot per acre.			Approximate percentage of rent on value of produce.
		Rs.	As.	P.	
Bankura	47	1	12	0	4%
Midnapur	48	3	2	0	6%
Jessore	57	2	7	0	about 5%
Khulna	60	3	6	0	5%
Faridpur	50	2	9	0	5%
Bakarganj	70	4	9	0	6%
Dacca	60	2	13	0	about 5%
Mymensingh	60	2	12	0	5%
Rajshahi	55	3	5	0	6%
Tippura	60	3	2	0	5%
Noakhali	75	4	4	0	6%

1 "According to Ricardo, the rent of any particular piece of land is the estimated difference between the amount which it produces and the amount of produce raised from the worst land in cultivation. The net produce is that which remains after every expense connected with the farm has been paid, and after an adequate remuneration has been given as the price of labour employed and the use of capital. This theory of rent may be true when there is free competition and when there is no interference by law or custom causing disturbance to free competition. Increase of population and consequent demand for land and the rise in the value of produce and decrease in the wages of labourers may increase the rate of rent in other countries, but in India custom controls the theories of Ricardo and Malthus." The majority of the judges in the case of *Thagooranee Dossee V. Bisheshur Mookerjee* accepted Mill's view of rent in India. But there is no doubt that the principle of competition gives to the theories of rent a scientific character.

The average rate of rent of occupancy ryots throughout the province is just over Rs. 3/- per acre and the average value of produce is just over Rs. 60/- per acre. This calculation does not take into account the letting value of homesteads and the produce of homestead lands attached thereto¹.

According to the Hindu system, the King's share, as mentioned by Manu, is to be one-eighth, or one-twelfth, according to the nature of the soil and the labour necessary to cultivate it ; but in times of prosperity, the King should only take one-twelfth, while in time of urgent necessity he may take one-fourth. With regard to the proportion taken in practice, there is considerable difference of opinion. Sir George Campbell said that the King took from one-tenth to one-eighth of the gross produce ; Mr. Shore said one-sixth ; others said something less than one-fourth of gross produce ;

1. Average rent and capital value per acre (exclusive of rough grazings) of holdings of different sizes in England & Wales, 1925.

Size groups acres	Mainly arable holdings		Mainly pasture holdings		Mixed holdings	
	Capital value per acre £	Rent per acre s.	Capital value per acre £	Rent per acre s.	Capital value per acre £	Rent per acre s.
1— 5	46	51	62	64	54	56
5— 20	42	46	52	53	46	47
20— 50	36	39	44	44	39	39
20—100	30	33	37	37	33	33
100—150	26	29	33	33	30	30
150—300	23	25	29	30	26	27
300—500	20	21	25	26	22	24
over 500	17	18	23	23	19	21
Over all Average	24	26	35	36	29	31

If the average capital value and rent per acre of all groups and kinds of holdings on the above figures be worked out, we get the capital value per acre at £31 and rent per acre at 31s (Dr. Venn's "The Foundations of Agricultural Economics, P. 75).

and Sir Thomas Munro put it as high as two-fifths. Again it is said that the cultivator got half the paddy produce, or grain in the husk, and two-thirds of the dry grain crop watered by artificial means ; this was after all deductions for village officers were made—the net crop.

In Emperor Akbar's time, Government were entitled to one-fifth of the value of produce. Before British rule, Sir Gorge Campbell says, the State took from one-fourth to half of the gross produce, one-third and two-fifths being the most common proportions. The Fifth Report puts the State proportion at three fifths in fully-settled land, leaving the cultivator two-fifths. Mr. Shore gives two different opinions: his earlier opinion is that Government took one third, but his later opinion puts Government share at from one-half to three-fifths. Mr. Elphinstone says, one-third is a moderate assessment and that the full share is one-half. Mr. Grant says, the proportion taken was one-fourth which he considers moderate.

In pointing out the proportion of the State share, according to the Hindu and Mahomedan systems, I have only attempted to make the point clear that the existing rent in the Bengal Delta which is only 5 per cent of the value of produce is a thing not to be complained of and if there are provisions for the enhancement of rent because of the rise in the prices of staple food crops¹ and of an increase in the productive power of land, the ryots can

1 "So far as my experience in Bengal Settlement goes, the rise of prices is practically the only ground on which decrees for enhancement can be obtained. The prevailing rate for land of similar description with similar advantages in the vicinity is difficult to prove, as also an increase in the productive powers of the land in respect of which the enhancement is sought"—Guha's 'Land System of Bengal and Behar.'

make no grievance of it as they are fair, equitable and scientific.

The rent in the United Provinces, be it noted, is decidedly higher than in Bengal. The table taken from the U. P. Provincial Banking Enquiry Committee's report (1929—30) gives the following information :—

Division	Rent per acre.	Value of outturn per acre.
Meerut	Statutory—Rs. 13½ Occupancy—,, 6/-	Rs. 75/-
Jhansi	Statutory—Rs. 3 Occupancy—,, 2½	Rs. 27/-
Gorakhpur	Statutory—Rs. 5 Occupancy—,, 4½	Rs. 78/-
Lucknow	Statutory—Rs. 7	Rs. 63

In Behar, the average rent per acre is Rs. 4/-. In Orissa, the average rent per acre is Rs. 2-8. In Behar and Orissa also, the rent in relation to the agricultural produce stands higher than that in Bengal. In Bengal 28,702,700 acres cropped give a gross return of Rs. 243,80,65,500, whereas in B. & O. the total acreage of 3 crores cropped gives only a return of a little above Rs. 111 crores.

All these definitely show that the rent of the occupancy ryots¹ is decidedly low—lower than that prevailing in other

1. It is even now true that the majority of the ryots in Bengal are the occupancy ryots, as would be evident from the following table :—

District.	All Ryots thousand acres.	Occupancy Ryots thousand acres.	Non- Occupancy Ryots thousand acres.	Under-ryots thousand acres.
Backerganj	1,389	1,346	42	81
Faridpore	1,297	921	55	133
Dacca	1,441	1,349	37	19
Tippera	1,178	1,103	35	68
Mymensingh	3,015	2,864	115	124
Jessore	1,577	1,370	6	493

provinces of India.¹ Therefore to argue that the rent has any connection, however distant, with the economic degeneration of the Bengal peasantry is giving a sort of premium to one's vicious mode of thinking. The question of rent looms large in a period of depression. The agriculturists think in terms of goods; if their produce carry lower prices it means that so much more goods would be required to pay rent. If, on the other hand, there is a rise in the value of agricultural produce, that would mean less produce necessary for fulfilment of rent. In this view of the thing, if the rupee is taken to be over-valued at 1s 6d and if the devaluation of Rupee at 1s. 4d. brings about a rise in prices of agricultural produce, then we would be justified to say that by the over-valuation of rupee at 1s.-6d. we have increased the rent by 12½ p. c. My point is that rent is affected, beneficially or adversely, to that extent inasmuch as there is a rise or fall in the prices of agricultural produce. But in

It is true that the under-rayats pay high rent, such as the under-rayat's rent in Bakarganj is Rs. 7-13 of the first grade and Rs. 9-14 of the second and third grades. In Mymensingh the under-rayat's rent is Rs. 5/- per acre—the bargadars and dhankaridars often pay rent of Rs. 14/- to Rs. 16/- per acre. It is not because of rent but because of agricultural indebtedness that the occupancy raiyats are diminishing and the under-ryots and bargadars are increasing. It is the money-lender which buys the agricultural holding of an occupancy ryot and settles him as an under-ryot or bargadar while the money-lender enjoys all the rights of an occupancy ryot. This does not benefit the landlord in any way.

1. The low rent in Bengal may be ascribed to natural causes. In Behar there was a pressure of the population on the land, so the Behar landowners had a decided advantage over the ryots and were able to maintain a system of payment in kind and "push rents upto a point which leaves the cultivator but a bare subsistence," but in Bengal, especially in the eastern portion of it, there were abundant unreclaimed lands and cultivators were scarce, and the raiyats had the advantage over the landlords of procuring lands on favourable terms

a normal year, other things being equal, the quantum of rent in Bengal does not swallow any big portion of the profit of the peasants and if the peasants are found wallowing in the morass of economic degeneration, the reasons are to be sought elsewhere. Normal years of general prosperity, it must be frankly admitted, outnumber the depressing ones and to approach a question on the hypothetical basis of depression as the general rule is at once unscientific and unfair.

In this connection, I would like to strike another standpoint: that the agricultural rent in Bengal is neither competitive, nor even customary. The true concept of rent as is maintained by the Rent Commission (1880), is that the rate is determined by Government. It is through the ingenious procedure of legislation and effective check against the enhancement of rent that the rate has come down so low. It is a matter of history, that the so-called parganna rate in the 1st half of the 19th century was above the economic rent through causes, historical. But towards the latter half of the 19th century, there has been a distinct advance in the country in the matter of population, in the cultivation of waste lands, in the rise of prices of agricultural commodities, and as a result of which, the value of land has increased and the competition wherefor has grown keener. In spite of the prevalence of all the economic causes conducive to the rise of rent, there has been a distinct lowering down because the existing prevailing rate is much below the economic rent; it is even much below the customary rent inasmuch as the elements that constitute customary rent are not given free play in the adjustment of rent. It is true of course that the Rent Act of 1859 did not provide for reduction of rent: it put a check to enhancement except on some specified grounds. Under the Act, assumption was that a ryot was paying fair rent even if it was higher rent than his neighbours. Section 38 of the B. T.

Act while laying down rules about the reduction of rent does contemplate reduction on the ground that the rate at which rent is paid by a particular ryot is higher than the prevailing rate. And the prevailing rate, as we have seen, means the rate paid by the majority of the ryots in the neighbourhood. The prevailing rate has thus worked out in favour of the ryots. The existing moderate rent as a result of the theory of the prevailing rent brings the following factors into prominence :

Before 1859 the ryots surely had in their possession more lands than the portions for which they paid rent (this was one of the many causes for which they declined to accept pottahs from the landlords); the method of agriculture was in those days primitive which did not yield good harvests (that is, the productive powers of the land were not made use of their utmost capacity); the prices of agricultural commodities were then low; the enhancement of rent after 1859 was sparsely resorted to ; great many waste lands were brought under cultivation towards the latter part of 19th century at low rates ; the improved means of agriculture together with the growth of population and expansion of trade brought about an advance in the prices of agricultural products. The interplay of all these favourable factors was allowed to govern the economic chess board of the country without any reciprocal benefit to the zemindars : that was the work of Government interfering in the interest of the ryots on the strength of the letter of the Regulations of 1793 but in defiance of the spirit thereof.

In view of this situation, it is difficult to understand the insistent demands made in the provincial legislature that section 30 regarding enhancement of rent should go to wall in order to bring about fixity of rent on a permanent basis. In fact, they have fixity of rent : the specified grounds of enhance-

ment, hedged round with so many conditions favourable for the ryots, as already pointed out, are scientifically fair and historically equitable. If in theory, the fixity of rent is sought to be attained, the ryots themselves invite a situation which contemplates, (a) payment of rent in rigid punctuality permitting no delay and necessarily no arrears and bringing about a revolution in the relation of landlord and tenant in the matter of ejection, recovery of rent, suspension of rent etc. , (b) and the denial of landlord's efforts in the reclamation of their zemindaries. Rent fixed in perpetuity should bring in all the risks and responsibilities attendant on land revenue fixed for all time : the sunset law shall have to be applied to ryots as well. That would be a situation spelling economic disaster of the highest magnitude to the tenantry. If rent is rigidly fixed by the strict letter of law, unlike the present situation where it is practically fixed by the spirit of law and atmosphere of time, landlords shall have to retire into the position of rent-collectors in the strict sense of the term and they would be stopped once for all from investing capital in the improvement of land—a situation which is not to be contemplated in light-hearted manner and with levity of temper. The Agricultural Commission, on the other hand, thoroughly impressed with the necessity of scrapping away the restrictions on the inherent rights and privileges of landlords, recommended seriously—"where existing systems of tenure or tenancy laws operate in such a way as to deter landlords, who are willing to do so, from investing capital in the improvement of their land, the subject should receive careful consideration with a view to the enactment of such amendments as may be calculated to remove the difficulties."

Moreover it would be historically iniquitous to fix rent in perpetuity in face of the Agreement of 1793.

I would then discuss if the mere repeal of section 30 is advisable under the circumstances.

It has been shown that in the interest of the ryots, the rent to be paid to the landlords is not allowed to reach the economic level by the free play of competition and that legislation keeps it below this level by making custom the basis of it. The customary rent, as is found, is a positive gain with the ryots, giving 5 or 6 p. c. of the produce of land to the landlords. The landlords have suffered because competition has not been allowed to influence the rate of rent. If the advocates of the ryots come forward to repeal section 30 of the B. T. Act, the landlords have no complaints to make, provided the principle of competition is allowed to govern the adjustment of the ryot's rent. If section 30 goes down, along with it would go down the influence of usage and custom in determining the rate of rent. The rate would then be determined by free competition, uncontrolled by law. In the delta lands are fertile, competition for land is keen, and the pressure of population on the land is heavy. And in view of these conditions obtaining in the province, unobstructed play of competition would raise the customary rent to the level of economic rent, in which case the ryots and not the landlords have to grumble. The influence of fixed custom in the adjustment of rent is the characteristic of a primitive society. "The relations, as is admitted by J. S. Mill, between the landowner and the cultivator and the payment made by the latter to the former are in all states of society but the most modern, determined by the usage of the country." It is true that the goal of the economic policy in respect of the landlord and tenant system must be "the individualistic minimum of governmental interference," as is held by Sidgwick. If that be the objective, tenancy legislation shall have to undergo a thorough overhauling. Piece-meal amendments are not only unfair but are born of illegitimate aspiration. The demand for the repeal of section 30 raises the fundamental questions if we are to bid adieu to the principle of customary rent and make room for competitive one. The repeal of one without

accommodating the other would be an anachronism. Apart from abstract principles which are also vital and fundamental, the following are some of the reasons which go to show that the repeal of the provisions of enhancement of rent would not be conducive to the prosperity of the ryots :

(1) Section 30 limits the landlord's power of enhancement and is not intended to give him additional powers. If the section were repealed, it would be only removing the bar to the enhancement of rent to a fair and reasonable extent.

(2) Section 30 limits the landlord's power to staple food crops. In the event of the repeal of the section, jute lands, which are specially valuable and yield a fair return, would reach a higher level of rent—at least the legal bar would not exist. At present, an increase in the price of jute is entirely swallowed up by the ryots.

(3) Section 30 specifies grounds of enhancement. If the section were repealed the landlords are free to bring forward other reasonable grounds of enhancement.

(4) Section 30 should not be made to stand isolated ; it is inter-connected with sections 27 to 38 governing the provisions of the enhancement and abatement of rent of occupancy ryots. Section 38 laying down grounds for abatement of rent of occupancy ryots cannot stand, if section 30 be repealed.

(5) The repeal of Section 30 would lead to the rack-renting of under-ryots and bargadars.

The rent of a non-occupancy ryot may be enhanced under the procedure laid down in section 46 of the B. T. Act. A revenue officer may in a proceeding under

Chapter X (Record of Rights) settle the rent payable by non-occupancy ryots in accordance with the rules laid down in section 46: the rent of a holding so settled cannot be varied within five years, except for alteration of area or improvement by landlord. On the expiration of five years, the rent may again be varied.

Reduction of Rent

Reduction of rent may be claimed on the ground of deterioration of land, either by nature or by an act of God. Under the Rent Acts of 1859 and 1869, the tenant could sue for abatement or claim abatement as a set-off in a suit for rent brought by the landlord, the burden of proof being on the tenant but the Act of 1885 contemplates abatement by a suit.

The tenant is to pay additional rent for excess land due to alluvion and is entitled to claim abatement on diluvion, reducing the area of the tenant's original holding; (under the Act of 1859, these provisions were applicable only to occupancy ryots). The decrease in area may take place: (a) on account of encroachment by a neighbouring holder, (b) encroachment by the landlord himself. (c) by diluvion, (d) by acquisition of land by Government for public purposes. The tenant is entitled to claim abatement in all the last three causes, except the first where encroachment by a neighbouring holder as an act of trespass ought not to be a ground of abatement of rent.

The outstanding merit of the Act of 1885 that under Chapter X it authorises Government to carry out a survey and record of rights and settlement of rents of tenants in an estate or tenure or of any local area. "It has secured the ryots far more effectively than before, against attempts on their position by unscrupulous landlords."

With all these restrictions, the question still remains—if illegal cesses and abwabs exist to make the burden of the ryots heavy. There are of course instances here and there of illegal cesses, but the cesses which are not sanctioned by law, are dropping away, one by one. In 1872-73, the Report on the Administration of Bengal discovered no less than twenty-seven kinds of illegal cesses—kinds, most of which were gladly paid in consideration of reciprocal advantage or lenience shown in the payment of rent. The question of illegal cesses need not be magnified out of its proportion because the latest Bengal Land Revenue Administration Reports record that the relationship between landlords and tenants is generally cordial. At present, if illegal cesses exist at all, I am not bold enough to deny their existence in any shape or form, they exist because of the action of the local agents of landlords and which in nine cases out of ten do not reach the coffers of the landlords. For the sake of exactitude, it may be said that minor abwabs exist as inevitable relics but the landlords do not profit by them, nor do many of them even know of their existence: illegal cesses, if any wherever they exist, are matters of private mutual agreement between the landlords' agents and tenants, the tenants gladly paying in return for a few concessions, and as such they may be said to be blotted out to all intents and purposes.

Arrears of Rent

We find that the cultivators pay an extremely moderate rent and it is of course the duty of the ryots to pay rent regularly: in case they default, that becomes an arrear which is tolerated by the laws of the country if it does not go beyond the period of limitation. Unlike landlords, the tenants have the sufferance of law in arrears to a consider-

able extent. Under the Act X of 1859, non-payment of rent does not bar the acquisition of the occupancy right, nor does it extinguish it. The maintenance of the right is of course dependent upon payment of rent: non-payment of rent might be a ground for presuming that the land was held not by a ryot but by a trespasser. Under the same Act, non-payment of rent entitles a landlord to re-enter the land by ejectment of the ryots, but the tenant has every right to protect himself by the payment of the arrears and costs within 15 days of the date of decree.

Under the existing Act, if rent is not paid in due time, the amount payable becomes an arrear of rent and interest accrues thereon—a position certainly liberal and advantageous for the ryots in the event of Sunset Law being applied in the case of landlords. The period of limitation for arrears is 3 years from the last day of the year in which the arrear fell due. Interest is regulated by contract, or in absence of contract, by usage. The maximum interest is simple interest of $12\frac{1}{2}$ p. c. per annum. Before the passing of the B. T. Act of 1885, there was no such restriction. Waiver of claim to interest is a question of fact. No interest is payable on arrears of produce rent, nor on money in a lease for the mere right of fishing (which is rent according to law). Court may award damages (not exceeding 25 p. c. on the principal rent) in place of interest.

In the absence of agreement or usage, the B. T. Act of 1885 makes rent payable in quarterly instalments of the agricultural years but under the Acts of 1859 and 1869, rent was payable monthly, in absence of contract or usage. Rent becomes due at the last moment, i. e., on the sunset of the day on which an instalment falls due. A tenant can pay rent at the village office of the land-lord, if there is no such office, to the landlord himself. A deposit in court is allowed: payment by postal money order is allowed.

Payment to one of several joint proprietors is a payment to all : payment under land-lord's direction may be made to any one, or for a specified purpose. Tenant making payment to his landlord is entitled to a receipt.

I have recited the provisions of law only to show that the tenants do not suffer in any way in regard to the quantum of rent, or in the mode of payment.

Remedies for Recovery of Rent

If we look to the history of the remedies for the recovery of rent, we find that the landlords are now crippled and their rights amputated beyond recognition. The responsibilities of landlords are there but they have been divested of rights—a situation, at once unpleasant and intolerable, which is not understood or appreciated in its proper perspective.

Regulation of 29th April 1789 authorised the Collectors to proceed against inferior renters paying revenue to Zemindars in the same way as was prescribed for proceeding against defaulting renters paying revenue direct to Government. This state of things did not continue for long. The Regulations of 20th July 1792 prohibited imprisonment and corporal punishment of ryot : the landlords would lose arrears of rent if they behaved otherwise and they would meet with prosecution for assaulting a ryot. But they empowered the zemindars to distrain without notice to the Collectors the crops, grain and cattle and cause them to be sold for arrears. The resistance to distress was of course punished with imprisonment. The Permanent Settlement kept alive only the provisions for distraint and Regulation 17 of 1793 enacted the provisions of 1792 substituting public officer or court for Collector, as mentioned in the latter

regulations. The result was, as was clear in the case of Banaressy Ghose's case, that the Raja was imprisoned for default while the ryots evaded payment. Regulation 35 of 1795 allowed defaulters to be imprisoned upon an application to the Court in cases of arrears over Rs. 500/-. Regulation 7 of 1799 repealed the limit of Rs. 500/- ; it made a few stringent provisions : (a) if distraint of personal property of defaulter or surety fail to bring arrears, the landlord can cause them to be arrested, and if arrears remain due, the defaulter or the surety are to be kept in custody until payment ; (b) the power of distraint may be delegated to agents ; (c) no demand is necessary to constitute default ; (d) if arrears are not liquidated within the year, the landlord may annul the lease ; if the tenant is an underfarmer, or if the tenant is a dependent talookdar, or holder of a transferable tenure, his tenure may be sold through court. Thus the person of the ryot could be seized in default under the above regulation and the ryot's property could be distrained under Regulation V of 1812 but under it, the distress for rent is to be considered illegal unless preceded by demand.

Under the Putnee Regulation 8 of 1819, the Khoodkasht ryots may be proceeded against by process of arrest, or summary suit, or distraint, and if the defendant does not appear, or cannot be arrested, the plaintiff may proceed *exparte* to obtain management of their lands.

The Act X of 1859 and Act VIII of 1869 made salutary provisions for the ryots : they rescinded Regulations VII of 1799 and V of 1812. They made further provisions that (a) the produce of land is held to be hypothecated for the rent payable in respect thereof, (b) the landlord may recover arrear by distraint and sale of the produce of land on account of which the arrear is due, but a cultivator giving security for payment will not be distrained in respect of the produce of land for which security was given.

The B. T. Act of 1885 modified the powers of distraint but the Amending Act of 1928 deleted all provisions as to distraint.

Ejection for Rent

It is the duty of the tenant to pay rent at a fair and equitable rate and in due appointed time : landlords cannot claim more, ryots are not entitled to pay less. The purganah rate is generally the standard rate and that is recognised as fair but in the absence of any evidence as to any other rate being fair, the presumption as to the fairness of the rate is the one at which rent has been previously paid.

If the ryots pay rent regularly, the landlords have no right to eject them. Here is the case of a master who has no right to dismiss his servant. The status of a ryot is thus more than that of a servant : his status is now that of a co-partner. Landlords and ryots are now partners in one business, the ryots being active ones. Immunity from ejectment of occupancy ryots is conferred by Acts of 1859, 1869 and 1885. The Rent Act of 1859 extinguished the landlord's right to eject occupancy ryots except for non-payment of rent, breach of any condition in the contract, or misuse of land. The ejectment can only be enforced under a decree of court. Under the Act of 1885, a landlord has only right to sell the land as property belonging to occupancy ryots for arrears or in execution of a decree; he can follow any other property, movable or immovable but he cannot eject him from his holding. Such immense powers and privileges have been conferred on the occupancy ryots. "The Act of 1859 recognised only a right to hold and cultivate, the Act of 1885 had recognised, in addition, a limited proprietary right in the ryot". This elevation of occupancy ryots to the status of a de facto proprietor is the work of Legislature, a work which

technically is in defiance of the Permanent Settlement Regulations.

A non-occupancy ryot of course enjoys less advantages and privileges, but still he is under no disadvantages in so far as the question of ejectment is concerned. Even a non-occupancy ryot cannot be ejected at the sweet will of a landlord; he can be ejected on the ground that he has failed to pay rent in time—the very same position which occupancy ryots enjoyed under the Rent Acts of 1859 and 1869. The holding of a non-occupancy ryot is liable to sale in execution of a decree for arrears of rent. The existing law is that the landlord is entitled to a decree for the ejectment of non-occupancy ryots for arrears of rent (which remain unpaid at the end of any agricultural year) if the amount of decree with costs and subsequent interest be not paid within 15 days of the decree. Refusal to pay fair and equitable rent is a ground for ejectment of non-occupancy ryots.¹

Suspension of Rent

A tenant pays rent, it must be noted, for the use and occupation of the land and in case the landlord or lessor fails to deliver possession to the tenant or lessee, the question of the payment of rent, as made in the contract, does not arise. If there is no mention of the rate of rent in the lease, the rent previously paid for the land is to be considered as the annual amount agreed to be paid. If there is a condition in the lease for ascertainment of the rent roll, the

1 In *Bakranath Mandal V. Binodram Sen*, a full bench of the Calcutta High Court held that a landlord cannot recover rent at an enhanced rate from a rayat who has no right of occupancy unless he proves the existence and the reasonableness of the grounds stated in his notice under section 13 of Act X of 1859. Section 13 is applicable to occupancy rayats and to all under-tenants and raiyats. The onus of proving the existence of grounds is upon landholders. This was the position under the Act of 1859.

landlord will be entitled to a provisional rent on the old basis until ascertainment is complete. Assessment for excess land according to a contract or lease may be made in a suit for arrears of rent.

It is the duty of the landlord not to guarantee the tenants mere possession but also quiet possession during the continuance of tenancy. Accordingly, eviction by title paramount causes suspension of rent.¹ But in case, a lessee is evicted by a trespasser, his responsibility for payment of rent does not cease because the lessee is always entitled to recover possession and damages from the trespasser.

There is also another question: if a tenant is evicted from a part. It may be urged that a part-eviction would free the tenant from payment of the entire rent as his quiet possession which it was the duty of lessors to protect has been disturbed. But that is taking an extreme view, though it has the sanction of common law in England. It is judicious that a part-eviction would mean a part-suspension of rent. Thus in the following cases viz., if a lessee be evicted from a part of the land by a stranger having a title superior to that of the lessor or by the landlord himself or by an act of God, as by the action of a river, the tenant will pay a proportionate amount of rent according to the quantity of land in his possession. But no suspension of rent would follow, if there is eviction by the lessor for wrongful action of lessee or by virtue of a power reserved. In all these cases, there must be actual eviction.²

1. "According to English law, if the lands demised be evicted from the tenant or recovered by a title paramount, the lessee is discharged from the payment of the rent from the time of such eviction"—Peacock C. J. in *Gopanund Jha V. Salla Govind Pershad*.

2. In case of a substantial interference with the tenant's enjoyment of the property without actual eviction, a suspension of rent follows and an action for damages lies in case of trespass or of partial eviction.

We have seen that the rate of rent in the province is extremely low : there are also various other privileges of ryots in the matter of rent. The most intriguing feature is that the ryots having the best of rights and privileges pay the lowest rent : the ryots having the least of privileges pay the highest rent. Such a situation is practically the gift of the Bengal Tenancy Act which, in my view, is an indirect financial measure, enacted in the financial interest of the Government. In the scramble for curtailing the proprietary powers of the permanently settled zeminders, real needs were side-tracked and genuine sores remained unhealed. This has been responsible for the grave situation of to-day which is threatening the economic structure of rural Bengal.

CHAPTER V.

THE ZEMINDAR

The growth of the Zemindar is extremely interesting : the Zemindar came into being out of the inevitability of circumstances. In the Hindu revenue system there was little room for the Zemindars. The Headman did not correspond to a Zemindar. In the absence of the Headman, the revenue was farmed to the official Collectors of revenue or outsiders. To collect revenue from the ryots, not forming a part of the village community, some sort of agency was employed. These were the germs out of which sprouted the institution of landlordism. In the Hindu times these officers were officials and ordinarily hereditary. "Having grown out of the ancient rajahs, native leaders, and out of various revenue officers, both ancient and modern, including the headman and farmers of the revenue, they (the Zemindars) acquired in course of time a right to collect the revenue of districts varying in size, sometimes consisting of a village or two, and sometimes of a large tract of country. They generally tended to displace the ancient revenue collectors whether Headmen or Rajahs, and to absorb their privileges."¹

In the Hindu period the office was hereditary and the zemindar, if that expression could be used, was in the position of a mere officer. The hereditary principle of the Hindu system came into conflict with the anti-hereditary principle of the Mahommedan system. The Mahommedan Government insisted that "the Zemindary was an office by

1. Phillips' Law of Land Tenures in Lower Bengal, pp. 96-97.

the acceptance of a Sunnud, at least in the case of the principal Zemindars." But in the confusion of later times the Mahomedan anti-hereditary theory crumbled on the rock of the Hindu hereditary principles. In course of time, the Zemindar became an hereditary officer. The functions of the Zemindar were to pay to the Government revenue and to collect the Government share of the produce. The Zemindar handed over to the State all he received after deducting his own emoluments.

There are conflicting authorities upon the question of the hereditary character of the office. Mr. Grant says "that a possessive tenure of certain subordinate territorial jurisdictions, called zemindaries, in virtue of a sunnud or written grant, determinable necessarily with the life of the grantee, or at the pleasure of the Sovereign representative is universally vested in certain natives, called zemindars, that is, technically holders of land, merely as farmers-general or contractors for the annual rents of Government." Mr. Grant admits that in the confusion of later times the Zemindar assumed, and the Government recognised, an hereditary right in the office. Others hold that the office of zemindar could not be claimed as hereditary, though by long custom, and perhaps out of policy, the children of deceased contractors were very generally admitted as successors to their parents; they were not however in all cases appointed, and sometime were ousted, the ground of forfeiture being usually specified in the new sunnud. Sir W. Boughton Rouse says that the Government used formerly to sequester the zemindary on the death of a zemindar, but afterwards, the children came to succeed. Mr. Francis asserted in 1776 that "the land is the hereditary property of the zemindar." He holds it by the law of the country on the tenure of paying a contribution to the Government. The larger Zemindaries are said to have descended by primogeniture and the smaller ones are divided. The Royroyan says: "The zamindars of

a middle and inferior rank hold their lands to this day solely by virtue of inheritance; whereas the superior zemindars after succeeding to their zemindaries on the ground of inheritance are accustomed to receive, on the payment of a nuzzeranah, peschush etc, a dewanny sunnud¹ from Government". The consent of the Government was required for the succession of an adopted son.

The officers of revenue, whenever they could sieze any opportunity, got their hereditary right admitted and were considered zemindars in their districts. After the invasion of Nadir Shah in 1739, most of the Jageerdars, Chowdhries, Farmers-general, Enamdars, Crores, Desmookhs etc. became zemindars. When the central authority became weak, these officers in charge of various districts owned and possessed many rights and many powerful zemindars came into being.

In the process of time, the influence of zemindars began to increase. At first, a zemindar was bound to account for

1. The granting of sunnud was a formal recognition by the State of rights already existing and almost independant of it. The sunnud specified the duties of the zemindar: he was a responsible representative of the Government in respect of the revenue; he was bound to render detailed accounts of his collections and to assist the Sovereign in case of invasion; he was responsible for the peace and order of his zemindary; his relation with the ryots was also that of a representative of the State, entitled to collect from them the share due to the Government and charged with the duty of protecting and assisting them, and the ryots in turn being bound to assist the zemindar in preserving peace and order; the zemindar was bound to advance tuccavee loans to the ryot in order to enable him to cultivate, to grant him remissions and indulgences in the payment of his revenue in case of calamity, and to exercise the functions of the State in encouraging and controlling especially with regard to the revenue; he had the duty of allotting and assessing the lands of his zemindary, of seeing to the accounts of the revenue and of collecting the rents.

the whole revenue collected. But when the practice of a fixed revenue, payable to the State, without reference to the actual assessment of the ryots by the zemindar came in vogue, the zemindars began to gather influence: they exacted unauthorised contributions and this practice "ultimately established itself so completely that at length it came to be considered that the zemindar was entitled to all he could squeeze out of the ryots in an indirect way, and he gradually grew to be looked upon as a sort of landlord in his relation to the ryots and a sort of tenant in relation to the State." In this wise, the proprietary character of the Zemindar came to be recognised while the official character was ignored.

There was thus a contest between the State to treat the zemindar as an officer and the Zemindar to acquire proprietary rights. Jaffier Khan, who governed Bengal from 1711 to 1726, tried hard to arrest the progress of the zemindary claims but was ineffectual in his attempt. The Government had to abandon the contest: the zemindar acquired a fixed hereditary right to contract for the revenue. The zemindary right which was claimed to be a kind of property came to be alienable, "a decisive mark of proprietorship of the soil." Along with the acquisition of proprietorship, the zemindar's emoluments began to expand. In the first place, he got a certain percentage of his collections; in the second stage, he retained the surplus revenue after paying to Government the amount contracted for; in the third stage, he distributed the assessment on a higher rate and enjoyed the receipts in excess of the stipulated amount; in the fourth stage, he began to make unauthorised collections for his own benefit, and the subtle way of enhancing the ryot's rent was to the distinct benefit of the zemindar.

The zemindar did also enjoy other privileges. The zemindar as a representative of Government had authority

to arrange for the cultivation of waste land (Khamar) or fallow (bunger) within his district and he enjoyed the whole of the revenue, as was payable for it. The revenue for the Khamar land, when cultivated by others, amounted to half the produce. The zemindar also enjoyed exemption from revenue of part of the land cultivated by himself (called *seer* or *neej-jote* land), and of paying a reduced rate upon the rest of his land—a very popular kind of remuneration in vogue in Bengal and Behar. This *seer nankar* or *nankar*, i.e., the revenue remitted of the *neej-jote* land, was taken by some "as a strong mark of proprietorship with respect to the whole zemindary," a proposition which was neither strong, nor sound. Mr. Shore pointedly said that "the principal zemindars received tithes and *jageers* according to their rank; while those of an inferior degree, in the event of their being obedient to the orders of Government, attentive to the improvement of lands and punctual in the payment of their revenues, received *nankar* proportionate to their exigencies; besides which they had no other allowances. The *nankar* was reduced from the revenue payable to Government. Afterwards, on the decline of the Empire, villages were granted for *nankar* in lieu of money."¹

The zemindar enjoyed other emoluments: he appropriated fees paid by the non-agricultural members of the village community, the water and fishery dues, forest dues,

1 The extent of *nankar*: sometimes the land that was immediately surrounding the zemindar's house; sometimes it consisted of lands adapted for special crops. The amount of *nankar* was variously estimated at from one to ten per cent; but better opinion fixed it at about five per cent on the gross revenue, and the other allowances by way of deduction from the revenue to another five per cent. The zemindars as usual encroached upon the State in respect of their emoluments and ultimately contrived to appropriate the revenues of whole villages and even whole *pergunnahs* as their *nankar* in some instances—Philips' *Land Tenures in Lower Bengal*, pp. 118-119.

pasturage dues, dues from fruit trees and orchards; he had a preferential right to the use of the tanks, commons and pasture lands of the village; he claimed the services of village officers of all classes and the gratuitous labour of some of the village labourers; he took a seer on each maund of grain, an anna and a half or two annas on a kutchā beegha or half beegha of other produce, half an anna in the rupee of money revenue, paid by each cultivator.¹

The zemindar in Bengal had many cesses to their credit; on births, marriages, deaths or festivals or on any other plea, the zemindar exacted a cess. Akbar forbade all exactions but these abwabs appeared in another form, and "according to an inveterate habit in India the abolished imports reappeared as extra cesses." There is no denying the fact that the Zemindar had all these emoluments and privileges by virtue of his official connection with the ruling power.

Theoretically the zemindar could be dismissed by the ruling power; but practically he was scarcely dismissed.² The zemindar cherished that he could not be ousted: the State regarded him merely as an official. In case, a zemindar was ejected, the ordinary general rule was to instal one of his

1. The zemindar derived his rights to them from the ancient Headmen and Malgoozars: these were allowances for the risk of collection. His allowance for collection was nominally five per cent and his whole allowance ten per cent.

2. Sir W. Boughton Rouse says that a zemindar could only be dispossessed on account of crime, failure to pay the revenue, rebellion, public robbery or other flagrant misconduct; another authority says that the zemindari families were in practice scarcely ever removed except for rebellion; Mr. Grant says that the sunnud was of indefinite duration and could be revoked at pleasure; there are authorities asserting that the zemindar could be dismissed like any other officer at the will of the Sovereign.

successors in the position, and in extreme cases only, a stranger was appointed. The practice of paying allowances to displaced zemindars was sufficiently well-established.

This was the position of the zemindar before the British rule. His position is discussed by various authorities and some of their views are given herein.

Mr. Grant in his "Political Survey of the Northern Circars" enunciates the extreme theory that the zemindar occupies a subordinate and official position. He catalogues the privileges of zemindars; first, the zemindar is to stand in the place of a perpetual farmer-general of the lawful rents claimed by Government within the circle of his jurisdiction; secondly, he is to be the channel of all moffassil serinjamy disbursements; he is to improve waste lands to his private advantage; fourthly, he is to grant pattahs for untenanted farms; fifthly, he is to distribute internally the burden of abwabs, or additional assessments, when levied on the assul jamma by zemindary jurisdictions; sixthly, he can pay his rents in money or kind agreeable to established rules adapted to either mode; seventhly, he can nominate a successor to his zemindary with the approbation of the Sovereign representative to be confirmed by dewanny sunnuds; eighthly, he can appear by a deputy in his behalf or that of any of the ryots subordinate to his authority, unless summoned by special writ applicable personally to himself.

Mr. Grant who is definitely anti-zemindar in his conclusions sums up the functions of zemindars, acting permanently in one or all of the following official capacities, viz., either as annual contracting farmers-general of the public rents; formal representatives of the peasantry; collectors of the royal proprietary revenue, entitled to a russoom or commission of five per cent on the net receipts of the moffussil or subordinate treasuries; or as financial superintendents of a described local jurisdiction, periodically variable in extent,

and denominated *eahtiman*, trust or tenure of *zemindary*, *talookdary* or territorial servile holding in tenancy, within which however is appropriated a certain small portion of land called *nancar* partaking of the nature of a free-hold; serving as a family subsistence to the superior landholder, to give him an attachment for the soil and make up the remainder of his yearly stated tithe for personal management in behalf of the State.

Mr. Shore in a minute of the 8th December, 1789, said :—"The relation of a *zemindar* to Government and of a *ryot* to a *zemindar* is neither that of a proprietor nor a vassal but a compound of both. The former performs acts of authority unconnected with proprietary right, the latter has rights without real authority; and the property of the one and rights of the other are in a great measure held at discretion."

Harrington described the position of the *zemindar* under the Mogul constitution and practice in the following way :—"The *zemindar* appears to be a landholder of a peculiar description, not definable by any single term in our language. A receiver of the territorial revenue of the State from the *ryots*, and other tenants of land. Allowed to succeed to his *zemindary* by inheritance; yet in general required to take out a renewal of his title from the Sovereign or his representative on payment of a *peshkush* or fine of investiture to the Emperor, and a *nuzuranah* or present to his provincial delegate the *Nazim*. Permitted to transfer his *zemindary* by sale or gift; yet commonly expected to obtain previous special permission. Privileged to be generally the annual contractor for the public revenue receivable from his *zemindary*; yet set aside with a limited provision in land or money whenever it was the pleasure of Government to collect the rents by separate agency, or to assign them temporarily or permanently by the grant of a *jageer* or *ultumgha*. Autho-

rised in Bengal since the early part of the present century to apportion to the pergunnahs, villages and lesser divisions of land within his zemindary the abwab or cesses imposed by the Soobadar, usually in some proportion to the standard assessment of the zemindary established by Torunmul and others; yet subject to the discretionary interference of public authority, either to equalise the amount assessed on particular divisions or to abolish what appeared oppressive to the ryot. Entitled to any contingent emoluments proceeding from his contract during the period of his agreement; yet bound by the terms of his tenure to deliver in a faithful account of his receipts. Responsibility by the same terms for keeping the peace within his jurisdiction but apparently allowed to apprehend only and deliver over to a Mussalman Magistrate for trial and punishment."

The Fifth Report described: "They (zemindars) were in general no other than the revenue servants of districts or sub-divisions of a province who were obliged by the conditions on which they held their office to account for the collections they made to the governing power in whose service they were employed and for which service they were in the enjoyment of certain remuneratory advantages, regulated on the principle of a percentage or commission on the revenue within the limits of their local charge; but having in the process of time and during periods of revolution or of weakness in the sovereign authority acquired an influence and ascendancy which it was difficult to keep within the confines of official duty, it was found convenient to treat with them as contractors for the revenues of their respective districts, that is, they were allowed on stipulating to pay the State a certain sum for such advantage for a given period, to appropriate the revenues to their own use and profits; the amount of the sum for which they engaged depended on the relative strength or weakness of the parties, the ability of the Government to enforce or of the zemindar to resist."

The Court of Directors observed in 1792: "Custom generally gave them (Zemindars) a certain species of hereditary occupancy; the Sovereign nowhere appears to have bound himself by any law or compact not to deprive them of it and the rents to be paid by them remained always to be fixed by his arbitrary will and pleasure. If considered therefore as a right of property, it was very imperfect and very precarious; having not at all or but in a very small degree, those qualities that confer independence and value upon the landed property of Europe."

Sir Charles Wilkins said: "A zemindar is an officer who under the Mahammedan Government was charged with the superintendence of the lands of a district, the protection of the cultivators and the realisation of the Government share of the produce, either in money or kind, out of which he was allowed a commission, amounting to about 10 per cent and occasionally a special grant of the Government share of the produce of the land of certain villages for his subsistence called nankar. The appointment was occasionally renewed and as it was generally continued in the same person, so long as he conducted himself to the satisfaction of the ruling power and even continued to his heirs, so in process of time and through the decay of the ruling power and the confusion which ensued, hereditary right, at best prescriptive, was claimed and tacitly acknowledged, till at length the zemindars of Bengal in particular from being superintendents of the land have been declared to be the hereditary proprietors of the soil."

Thus there were two distinct contradictory views about the proprietary character of the zemindars before the advent of British rule, the one class arguing that the principle of dividing the produce with the cultivators, the existence of the sanad making investiture essential, the zemindary being a service, the terms in the Sanad assigning duties but con-

veying no property, the payment of a fine to the Sovereign as a preliminary to investiture, all such traits annihilate the idea of a proprietary inheritable right, and the other class arguing that the zemindary was inheritable by usage and prescription, the sanad merely confirmed existing rights, the State's claim of the share of rents was not inconsistent with the existence of proprietary right, the nazarana paid in investiture was probably an exaction; all these support the proprietary character of the zemindar.¹

In support of the proprietary character of the zemindar, it is stated that when the Company applied for a grant of the talukdari of 38 villages near their Bengal factory, they were told that they would have to purchase the rights of the owners: and when Gulum Hussain, the historian, was asked by Sir John Shore whether he ought to pay for land of which he wanted to take possession, his reply was, "the Emperor is proprietor of the revenue, he is not proprietor of the soil."

It is true that the ruler as an absolute owner was discouraged during the Hindu and Mahommedan rule. At the same time there was another doctrine that the conqueror is all supreme; his will is the only law and everything is his. The very idea that the Tribute or Khiraj was a mild substitute for slavery or death is traceable to this doctrine. The King acquires everything by conquest, so should he claim land and the amount of his demand for revenue is a matter of his will and conscience. Such a claim was made by later Sovereigns when they required more money. The British authorities succeeded to them in all their doctrines.

The British Government claimed the doctrine for re-distributing, conferring and recognising rights on a new basis.

1 A. C. Guha's Land Systems in Bengal, pp. 32-33.

The outcome was that they recognised private rights and retained such rights for itself as were necessary. It was a case of partition.

The claims made by the British Administration in India are categorically stated by Baden Powell :

(1) Government used its own eminent claim as a starting point from which to recognise or confer definite titles in the land in favour of persons or communities that it deemed entitled.

(2) It retained the right to waste lands.

(3) It retained useful subsidiary rights—such as minerals or the right to water in lakes and streams.

(4) It retained the right of escheat and to dispose of estates forfeited for crime, rebellion etc.

(5) It reserved the right for the security of its income of regarding all lands as in a manner hypothecated as security for the land revenue.

At the time of the Permanent Settlement and afterwards, there were three claimants for the right to the soil: the Sovereign, the zemindar and the cultivator. The right was claimed for the Sovereign because there was no limit to his power to take the profits. It is criticised on two grounds, viz., that there are limits to his taking the produce both in express law and custom and that he did never exercise a right to anything beyond the natural or accidental produce of the soil. The zemindary right is a hereditary and alienable proprietary right in land. On behalf of the cultivator it may be urged that the khudkast's right is hereditary.¹

1. Phillips' Law of Land Tenures in Bengal.

There is a point of view which urges that the idea of absolute ownership is quite untenable in respect of land. In understanding the term, "proprietary right", properly, they insist that there is no such thing as an absolute ownership of the soil vested in any private person. "As a matter of fact," as Dr. Field remarks, "no one ever did or can own land in any country i.e., in the sense of absolute ownership, such ownership as a man may have in movable property, as e.g., in a cow or a sheep, or in a table or a chair, which may be broken up and burned at the pleasure of the owner." In English law, no man is absolute owner of lands; he can only hold an estate in them, meaning the interest owned by an individual. In tracing the growth of private property, one finds that the "right of cultivating particular portions of the earth is rather a privilege than a property, a privilege first of the whole people, then of a particular tribe or a particular village community and finally of particular individuals of the country: in the last stage, land is partitioned off to those individuals as a matter of mutual convenience, but not as unconditional property; it long remains subject to certain conditions and to reversionary interests of the community, which prevent its uncontrolled alienation, and attach to it certain common rights and common burdens."¹ The advocates of this school hold that various parties have various interests in land and the "proprietary right" of the landlord exhibits a kind of interest which does not exhaust the bundle of rights. Even when and where the landlord is the actual proprietor, his interest is limited: the Government and the ryots have interests which cannot be brushed aside. According to them the Bengal Zemindar even after the Permanent Settlement is not the absolute proprietor; first, absolute proprietorship of land is not possible and was never claimed; secondly,

1 Sir George Campbell in his "Essay on Indian Land Tenures," Cobden Club papers.

there are ryots with clear rights and Government with definite powers and in the latter sense, the High Court Judges remarked in the Great Rent Case of 1865, that "the Regulations teem with provisions quite incompatible with any notion of the zemindar being absolute proprietor."

Mr. Justice Trevor tersely put his case when he said that though recognised as actual proprietors of the soil, the Zemindars and others entitled to a settlement were not absolute proprietors and that the zemindars enjoyed their estates subject to and limited by the rights and interests in land possessed by subordinate parties requiring protection and "that the notion of an absolute estate in land is as alien from the Regulation Law as it is from the old Hindu and Mahammadan law of the country." Mr. Justice Macpherson sang in the same tune and remarked: "As regards the legislation from 1793 down to Act X (of 1859), it in my opinion shows clearly that the zemindar never was, and never was intended to be the absolute proprietor of the soil." Mr. Justice Seton-Karr remarked: "Neither by Hindoo, by Mahomedan, or by Regulation law was any absolute right of property in land vested in the zemindar to the exclusion of all other rights; nor was any absolute estate created in favour of that class of persons. The ryot has by custom, as well as by law, what we may term a beneficial interest in the soil." Mr. Justice Campbell said similar things. Mr. Justice Norman said that the zemindars were by the Regulations constituted owners of the land but such ownership was not absolute.

Sir Barnes Peacock did not agree with the actual decision in the Great Rent Case. Sir Henry Maine¹ said that the greatest change after the Regulations of 1793 was "the growth on all sides of the sense of individual rights, of a

1 Village Communities, 73.

right not vested in the total group, but in a particular member of it aggrieved." It is undoubted that the Legislature for the first time in 1793 declared that the property in the soil was vested in the zemindars and that "they might alien or burden that property at their pleasure without the previously obtained sanction of Government." The zemindars got absolute right to their properties with complete powers of alienation, "the rights of all subordinate holders were necessarily derivative therefrom; and the ascertainment, definition and enforcement of them immediately fell within the province of the public courts of justice."

Mr. Shore definitely held that the zemindars were proprietors: any interference by the Government in his opinion, would be an invasion of proprietary right and an assumption of the character of landlord which belongs to the zemindar. Lord Cornwallis admitted the proprietary rights of the zemindars and opined that "the grant of these lands at a fixed assessment will stamp a value upon them hitherto unknown and by the facility which it will create of raising money upon them either by mortgage or sale will provide a certain fund for the liquidation of public or private demands or prove an incitement to exertion and industry by securing the fruits of those qualities in the tenure to the proprietors' own benefit."

The question of the proprietary character of the landlords was hotly discussed in the eighties of the last century when the Bengal Tenancy Legislation in derogation of many of the rights of the zemindar was hatched. The landholders of Bengal and Behar submitted a Memorial to the Secretary of State in the early eighties of the last century wherein they urged, (1) that the zemindar was not a creation of the Settlement but a survival from days long before the reign of Akbar, as shown by the fact that many of the

oldest families could trace their origin to a period anterior to that reign and in some cases even anterior to the Mahammadan rule, (2) that the land tax paid by them was practically permanent and remained unchanged from the time of that illustrious Monarch to the stormy days of Cossim Ally's misrule, nearly a century and a half, (3) that the established principle of Mogul finance was that the rents belonged to the Sovereign and the lands to the zemindars, (4) that the Emperors of Delhi used to purchase lands from the zemindars in recognition of their proprietary rights, (5) that the language of the charge formulated by the House of Commons against Warren Hastings contained in express words the clearest and most solemn admission of such proprietary right, (6) that Hastings himself in his Memoirs never denied its existence but sought to palliate his violation of it by a pretended anxiety for the welfare of the landlords themselves, (7) that the statute 24 Geo : III C25 Sec. 39 read in the light of the instructions issued by the Court of Directors assumed that the zemindars had proprietary rights in the soil, (8) that the Despatch of that Court dated 21st August 1788 declared that the zemindars had a hereditary tenure in their possessions, that many of them could trace back their rights to days coeval with the conquest of Akbar and that the idea of this right had been repeatedly sanctioned in discussions in Parliament, in the decisions of courts, and in the practice of Government.

This Memorial was criticised by Mr. Macdonnell, Revenue Secretary to the Government of Bengal who ridiculed their case as made up of "ill-remembered fragments of history and ill-understood passages of law." Mr. MacDonnell contended that the standpoint which stated that during the Moghul days the rents belonged to the Sovereign and the land to the zemindars was fallacious inasmuch as "the authorities maintain that by "Zamindars" in that context is meant the actual cultivators of the soil (Arab-i-

Zamin); the truth is, says the famous Hanifat lawyer Abu Mahomed Saraksi, that between the Sovereign and the Rubbalaraz who is properly cultivator, no one intervenes who is not a servant of the Sovereign." It is true that the *firman* issued by the Emperor Alumgir contains the phrase, arab-i-zamin but according to responsible authorities, the meaning of "arab" which is plural of "rub" is lord or master and not cultivator. "Rub-ul-araz" is rendered by Professor Wilson as meaning proprietor or master of land. Sir John Shore and Harrington understand the terms in the sense taken by Professor Wilson and others.

. The facts and circumstances were eloquent in favour of the contention that the land belonged to the zemindars during the Moghul Government and Sir John Shore held that view on the following grounds :

(a) the policy of the Moghul Government conceded the right of private property and the language of the *firman* of Aurangzeb pointed to the proprietary character of the zemindars,

(b) the mode in which public sales for arrears of revenue were conducted, the forms which were gone through, the admitted need of the signature of the previous zemindar, the application of the sale proceeds towards the payment of arrears—all point to the existence of the right of ownership in the zemindars,

(c) that in the case of private sales of zemindaries the transfer was effected by the former zemindar,

(d) that zemindars were heritable and capable of devolution by right of succession.

The Memorialists held that the Emperors of Delhi made purchases from the zemindars. Mr. Macdonnell asserts that "the document on the strength of which the statement is

made postulates that the zemindar is a payer of revenue." It is not true. If we turn to Harrington's analysis, we find the question—"Why did the king or Nazim purchase lands since he had the power to take them?" The question is answered by two native gentlemen who according to Sir John Shore, "from their situation or knowledge either possessed or had means of acquiring information." They said, "A zemindar is a payer of revenue; by ancient usage the revenue belongs to the Emperor and the soil to the zemindar, the Emperor keeping in view the practice of former times considered the taking of land without paying for it as an act of oppression and in this pursuasion they adopted the contrary method because it appeared to them founded in right."

Mr. Macdonnell quoting from the Report of the Committee of Revenue in 1786 made out that their definition of zemindar as constructed from the terms of sanads or patents of investiture precluded the idea of ownership. The Court of Directors in their letter dated the 20th of August 1788 condemned the character of that definition. It was a fact that many of the zemindars at the time of the Permanent Settlement were the lineal descendants of those persons who possessed lands before and under the conquest of Bengal by the Emperor Akbar. Mr. Dundas, President of the Board of Control, was satisfied, according to Mr. Rouse, the Secretary to that Board, about the hereditary title of the zemindars. The Governor-General Mr. Hastings and Mr. Barwell maintained the same opinion. Sir Philip Francis observed, "The land is the hereditary property of the zemindar. He holds it by the law of the country on the tenure of paying a certain contribution to Government." Mahommed Reza Khan in his work entitled "State of Bengal" remarked that the Princes had no immediate property in the lands. Sir Philip Francis writing in 1775 says: "It is material to observe that the late administration who either dispossessed

most of the zemindars of their management of the lands or took no measures to restore them constantly describe them as the hereditary proprietors."

Mr. Francis in his minute in 1776 observed: "The inheritable quality of the lands is alone sufficient to prove that they are the property of the zemindars, talukdars and others, to whom they have descended by a long course of inheritance—when the Moghuls conquered Bengal, there is no mention in any historical account that they dispossessed the zemindars of their lands, though it is frequently observed that when they voluntarily came in, they are received with marks of honour and that measures were used to gain and secure their attachment." Sir John Shore recorded in a similar strain: "For my part, the further I have carried my enquiries, the more firmly I am convinced that the state in which we received the rich provinces of Bengal, Behar and Orissa was a general state of hereditary property, modified certainly according to the nature and customs of the Government which has prevailed there, but nevertheless existing with important benefit to the possessors according to the universal sense of the people; sanctioned by the constant practice of the native princes and established by immemorial usage from one end of the country to the other. I did imagine that this question had received its decision by the common consent of all political parties in the kingdom; resulting from the minute examinations which had been made into the subject, at a period when correct local knowledge was attainable; and by the voice of several statutes passed by the two last Parliaments, in the years 1781 and 1784, in which, amongst many salutary regulations, the zemindars and other landholders are distinguished from persons holding mere official nominations and marked as a class of men eminently entitled to the national protection."

Whatever the rights of the ante-settlement zemindars

might have been, it is clear that the Regulations declared the zemindars as "actual proprietors of the soil." The issue is now narrowed down to this: the one party puts upon the words, "the actual proprietors of the soil," their full and ordinary meaning, and the other party maintains that the Government conveyed by the Settlement simply a qualified ownership. We have seen that the zemindar before the Settlement was an owner of land endowed with the power of sale and the right of inheritance. Moreover, there are passages in the Regulations from which inference is irresistible that the zemindars have been declared as owners of lands. The 6th article of the Proclamation of 1793 states that the proprietors of land will exert themselves in the cultivation of their lands under the certainty that they will enjoy exclusively the fruits of their good management and industry; the preamble to the second Regulation of 1793 states that no power will then exist in the country by which the rights vested in the landholders by the Regulations can be infringed or the value of landed property affected and similar other passages go to prove the real intention of the Settlement. The Court of Directors in their despatch of the 19th September 1792 clearly stated that their object was to establish "real, permanent, valuable landed rights and to confer such rights upon the zemindars."

The confusion about the proprietary character of the Bengal landlords that existed could be traced to the attempt to assimilate the complicated system found in Bengal with the simple principles of landlord and tenant in England. The English theorists were governed by such confusion with the result that they made disparaging remarks about the proprietary and hereditary character of the landlord. Harrington pointed out: "If by the terms "proprietor of land" and "actual proprietor of the soil" be meant a landholder possessing the full rights of an English landlord or freeholder in fee simple, with equal liberty to dispose of all

the lands forming part of his estate, as he may think most for his own advantage; to oust his tenants on the termination of their respective leaseholds; and to advance their rents on the expiration of his leases at his discretion; such a designation, it may be admitted, is not strictly and correctly applicable to a Bengal Zemindar, who does not possess so unlimited a power over the khoodkasht ryots and other descriptions of under-tenants possessing as well as himself certain rights and interests in the lands which constitute his zemindary."

Colonel Wilks lifted the veil of confusion to a considerable extent when he said:—"In England a proprietor of land who farms it out to another is generally supposed to receive as rent a value equal to about one-third of the gross produce. This proportion will vary in different countries according to circumstances, but whatever it may be, the portion of it which remains after payment of the demands of the public may safely be described as the proprietor's share of the produce of his own land; that which remains to him after defraying all public taxes and all charges of management. Wherever we can find this share and the person entitled to receive it, him we may without the risk of error, consider as the proprietor, and, if this right has descended to him by fixed rules from his ancestors, as the hereditary proprietor."

According to this definition, it is to be said that the zemindar of Bengal is an hereditary proprietor: "his zemindary descends to his legal heirs by fixed rules of inheritance. It is also transferable by sale, gift or bequest. And he is entitled to a certain share of the produce if it be taken out of his management." Those who hold that the peculiar tenure of a zemindar under the Mussalman government of Bengal partook more of the nature of an hereditary office with certain rights and privileges than of a proprietary estate

in land, should remember that "if the zemindary be even an office, and such office gives possession of land, which has by claim or custom descended from father to son or to collaterals, with other circumstances incident to property such as mortgage, alienation, bequest or adoption, it is in reality a landed inheritance."

The changes in the position of the zemindar brought about by the Permanent Settlement are significant. The Settlement declared the zemindars as the proprietors of the soil. It reduced the Government interference with the rights of the zemindars: the State resumed the functions which it had hitherto performed through the zemindars, but attempted no interference with the work of assessment and realisation of rent paid by the cultivators. In fact, the ancient system of minute scrutiny and supervision over the work of the zemindar was abandoned with the hope that the zamindars, left free, would look to the improvement of their zemindariies.

In numberless places in the Cornwallis Code, the zemindars were styled as proprietors of the soil but Messrs Mackenzie and O'Kinealy contended that nothing particular was meant by the expression. To prove how illusory this proprietorship was from the first understood to be, Mr. O'Kineally cites a case decided in 1811 by the Sudder Dewany Adawlut:—

"I will now refer to a case decided in 1811, as a striking illustration confirming the opinion I hold in regard to the effect of the Permanent Settlement, and the limitations on the character of the proprietary right of the Zemindars as established by it. In Beerbhoom there had existed from a long time a Loha Mehal, or collections from the digging and smelting of iron within the estate, similar

to the Nimak Mehal or salt revenue. The revenues of this mehal were, at the Permanent Settlement, kept separate from those arising out of cultivation. Subsequently the mehal was sold, and soon after a dispute arose as to the rights of the "proprietor" of the permanent settlement and the purchaser. The former declared that the rights to the mines and the places of manufacture followed the property in the land in which they lay; the latter that the proceeds of the mines formed one branch of revenue, that the zemindar had paid a distinct assessment on it, and that the right to the mines went with the sale of the mehal, not with the Permanent Settlement. On inquiry it was ascertained that, according to the custom of the place, the Loha Mehal had been separately assessed. The Sudder Dewany held that the proprietor could not restrain the miner, who was entitled to work old mines, and open new ones according to established usage. I suppose nothing could bring out in stronger relief the difference between rights of property in England and India than this case. The common law of the land carved a perpetual mining lease out of the proprietary rights of a landowner as viewed from the standpoint of English Law."

The case referred to is the case of Gooroopershad Bose *versus* Bisnoochurn Hajra, fully reported in Macnaghten's Select Reports Vol. I, pp. 451-60. There is no doubt that Mr. O'Kineally has misread the facts of the case.

It appears, then, from Macnaghten's report (1) that the zemindary of Beerbhoom, including the Loha Mehal, had been permanently settled with the Rajah of Beerbhoom; (2) that the profits of the Loha Mehal had been, all along, from a time long before the Permanent Settlement, kept separate in the Rajah's private accounts from the general rents and profits of the zemindary, and that the assessment paid by him to Government on account of the Loha Mehal

was likewise entered separately in the accounts of Government; (3) that the plaintiff became the purchaser of the whole Loha Mehal in 1799, and the defendant had purchased a particular pergunnah in the zemindary in 1796; (4) that the former in his plaint alleged that the "Loha Mehal had continued the property of the Rajah of Beerbhoom, till the year 205, Bengal era, corresponding with the year 1799, A.D. when it was sold," and that by his purchase he "had acquired the whole of the former zemindar's rights in the iron mines of his zemindary;" and (5) that the latter insisted that by his previous purchase of the pergunnah he was entitled to so much of the profits of the Loha Mehal as were derived from the mines and manufactories within his pergunnah. It is clear that both parties claimed under the "proprietor" of the Permanent Settlement, and the only question was, what portion of his rights had passed to the plaintiff, and what portion to the defendant. It was found on the trial that the plaintiff's allegations were true, and that the deed of sale from the Rajah in favour of the defendant, although it particularised with great minuteness the rights and property conveyed to him, contained no mention of the mines, and manufactories in the land sold. The decree which was ultimately made by the Sudder Dewanny Adawlut was in favour of the plaintiff, who was declared entitled according to the established usage, to the profits of the entire Loha Mehal, including those derived from the mines, and manufactories in the pergunnah purchased by the defendant, and also entitled to open new mines in that pergunnah on condition of making to the defendant "a full and liberal compensation for the value of any land which may be rendered unfit for cultivation."

The restrictions on the powers of the zemindars are to be found in Regulation VIII of 1793. Section 52 says that the zemindar is at liberty to let the remaining lands (that is, all the lands of the estate save the lands in the possession of

dependent talookdars, istemrardas and moccurreydars) in any manner he may think proper subject to the prescribed restrictions: first, if he elects to let his lands in farm, the farmer shall not be authorised to collect rent from the ryots unless he is armed with an amilnamah; secondly, he shall consolidate all abwabs and mhatoot with the assul into one specific sum; thirdly, he shall not impose any new abwab or mhatoot; fourthly, he shall vary the pottah if the species of produce is changed for the remainder of the term, or for a longer period, if agreed on; fifthly, he shall specify the exact rent or rate of rent in the pottahs given to ryots; sixthly, he shall register the forms of these pottahs in the Zillah court; seventhly, he shall grant pottahs to ryots who may also demand pottahs from him; eighthly, he shall allow all evicting leases to ryots to remain, until the period of their expiration, and as regards khoodkasht ryots, he shall not cancel their pottahs unless within the last three years their rent has been reduced below the pergunnah rate; but he could cancel all pottahs procured by collusion. Under Regulation XLIV, 1793, the zemindar is prohibited from granting pottahs to any ryot for a term exceeding ten years.

After the Settlement, zemindar's nankar, khamar and neej-jote lands were resumed and assessed, "unless held from before the accession to the Dewany." Waste lands included in the zemindary were not liable to assessment upon being brought into cultivation. Remissions of revenue were altogether stopped. Under Regulation XXII of 1793, landlords are to preserve the peace of the country: this was repealed as obsolete by Act XXIX of 1871.

The general effect of the Settlement was that the zemindar was detached from the Government: naturally he lost some of his former privileges and emoluments. The following from the pen of the Right Hon. T. Pemberton Leigh is illuminating:

"Many of the greater zemindars, within their respective zemindaries, were entrusted with rights, which properly belonged to the Government. They had authority to collect from the ryots a certain portion of the gross produce of the lands. They, in many cases, imposed tolls, and they increased their income by fees, perquisites, and similar exactions, not wholly unknown to more recent times and more civilised nations. On the other hand, they were bound to maintain peace and order, and administer justice within their zemindaries and, for that purpose, they had to keep up Courts of Civil and Criminal Justice, to employ kazees, cannongoes, and tannahdars, or a police force. But while as against the ryots and other inhabitants within their territories many of these potentates exercised almost regal authority, they were, as against the Government, little more than stewards or administrators. . . . It was considered by the East India Company that the first step towards a better system of Government and the amelioration of the condition of their subjects, would be to convert the zemindars into landowners, and to fix a permanent annual jummah or assessment to the Government, according to the existing value, so as to leave to land proprietors the benefit of all subsequent improvements." (Raja Lelanund Singh vs. The Bengal Government, 6 Moore, pp. 108-110).

The proprietary rights of the zemindars subject to certain limitations stand undisputed. There is one reservation in the Cornwallis Code which says :

"It being the duty of the ruling power to protect all classes of people and more particularly those who from their situation are most helpless, the Governor-General in Council will, whenever he may deem it proper, enact such Regulations as he may think necessary for the protection and welfare of the dependent talookdars, ryots and other cultivators of the soil: and no zemindar, independent

talukdar or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay."

On the strength of this provision, the Legislature has thought fit to cut down the rights of the Zemindars. Thus, much depends on the interpretation of this reservation. The interpretation of this reservation is to be governed by the preamble to Regulation II of 1793 which contains these significant words: "No power will then exist in the country by which the rights vested in the landholders by the Regulations can be infringed or the value of landed property affected."

It is to be noted that the power reserved by the Governor General in Council by Clause I, Section 8, Regulation I of 1793 is expressly reserved on behalf of dependant talookdars and ryots and as against zemindars but "there was no similar power reserved on behalf of the ryots as against the dependent talookdars." If it can be shown that the tenancy legislations of Bengal have given powers to the ryots to the detriment of the dependant talookdars—a position which can easily be proved, it can legitimately be said that they do not come within the plain meaning of the reservation. Moreover, the assurance given in the preamble to Regulation II is not to be whittled down. "It would be absurd to suppose that the Governor-General in Council when he declared the zemindars to be proprietors of the soil, in the same breath told them that he kept in reserve a power, to be sprung upon them whenever he chose, by which their proprietary rights or the value of their landed property could be interfered with or affected, and nevertheless gave them distinctly to understand that they should not expect the remission of a single rupee in the assessment which was fixed at ten-elevenths of the then existing value of their zemindaries."

For the sake of precision, it can be stated categorically from a review of the Regulations of 1793 that the zemindars before the Settlement used

- (a) to levy *sayer* on hats and bazars and impose other internal duties,
- (b) to keep up Police establishments,
- (c) to receive *malikana* allowance from Government in case the land was held *khas* or let in farm on refusal of the proprietors to accept the then temporary settlements,
- (d) to impose *abwabs* or *mhatoots*,
- (e) to hold certain private lands as *nankar*, *khamar*, *nij-jote* in the cultivated area for the maintenance of themselves and their families,
- (f) to pay the revenue which was periodically revised;
- (g) they had the right of inheritance,
- (h) they had no recognised power of alienation by sale, gift or otherwise without the previous sanction of the Government,
- (i) they were responsible for the peace of the country,
- (j) they were liable to be sued and imprisoned for arrears of assessment,
- (k) they had no power to grant leases extending beyond the term of their own engagements with the Government,
- (l) they had the power of summoning and if necessary compelling the attendance of their tenants for adjustment and recovery of rent,

- (m) they had the power of inflicting corporal punishments on defaulters.

Under the Permanent Settlement, the position of the Zemindars was thoroughly transformed:¹

(1) The Zemindars were called the "proprietors of land."

(2) The revenue payable by them was permanently fixed.

(3) They were empowered to transfer their property by sale, gift or otherwise without the previous sanction of Government.

(4) They were empowered to resume a certain class of lakheraj lands and mokurrori holdings.

(5) They were confirmed in their possession of the nankar, khamar and nij-jote lands whether they accepted the Settlement or not, provided they paid the apportioned revenue.

(6) Those who finally declined to accept the Settlement were allowed a malikana in consideration of their proprietary rights.

(7) They were empowered to "let the remaining lands of their zemindaries or estates, under the prescribed restrictions, in whatever manner they may think proper."

(8) Their estates were made liable to summary sale for arrears of revenue.

1. Vide a brochure on "the Principles of the Bengal Tenancy Bill legally examined" by Mr. Nuffer Chandra Bhatta, published in 1883.

(9) They were encouraged "to exert themselves in the cultivation of their lands under the certainty that they will enjoy exclusively the fruits of their own good management and industry and that no demand will ever be made upon them or their heirs or successors by the present or any future Government for any augmentation of the public assessment of their respective estates."

(10) They were enjoined "to conduct themselves with good faith and moderation towards their dependent talookdars and ryots" and to require their officers also to have that way.

(11) Government reserved the power of enacting laws whenever proper "for protection and welfare of the dependent talookdars and ryots."

(12) The power of imposing sayer and other taxes was taken away from them.

(13) The proprietors were ordered to revise and consolidate all the existing abwabs and mhatoots with the assul rent into one specific sum.

(14) They were prohibited to impose any new abwab or mhatoot under any pretence whatever.

(15) They were ordered to grant pattahs to ryots for a period not exceeding 10 years and to determine rents in modes to be specified hereafter.

(16) Neither they nor the Government had the power to increase the rent of istemrardars who held land at a fixed rent for more than 12 years before the Settlement.

(17) They were prohibited from enhancing the rents of dependent talooks except under particular circumstances and to a prescribed limit.

(18) They had the power of ejecting all ryots khoodkasht or paikast having a right of occupancy or not, but not having right of property or transferable possession for arrears of rent even without recourse to law.

(19) They were divested of their semi-regal powers of taking cognisance of suits, of keeping Police establishments, of appointing and paying Cauzies and Kanongoes etc., and the responsibility for the peace of the country.

(20) They were to remain bound by the terms of the Settlement kabuliats not repealed by any Regulation.

(21) Their power to summon and if necessary to compel the attendance of their tenants was maintained.

(22) Their power of coercion was restrained and they were invested with the powers of distraint of not only the produce of the land but of all personal property and cattle of the defaulting ryots.

(23) Phulkur, Bunkur, Jalkar belong to the proprietors.

History of Rent Law

The history of rent law is extremely interesting in Bengal. After the enactment of Regulation I of 1793, a demand, rather a wail, came from the landholding community for better and easier methods of realisation of rents from the tenants. Knocked down as they were by the heavy assessment under the Settlement, it was impossible for them to stand without effective powers to realise their dues punctually. In fact, they did not and could not stand and they lay prostrate for their inability to realise the due rents. The default in the payment of revenue and the rigid application of the sunset law revolutionised the position of the landlords.

It was felt necessary that facilities should be given to the landholders for easy realisation of their dues from the ryots. Regulation IV of 1794 gave the zemindars power to recover rent at the rates offered in the lease, whether the ryot agreed or not. This did not improve the situation: numerous suits that swamped the court placed the zemindars in a dilemma. The procedure of the courts required that every individual should be sued separately and to institute and carry on to a successful issue so many suits called for an amount of outlay which was beyond the means of most zemindars. The ryots on the other hand, released from the fear of personal distraint abused their economic freedom and defied the zemindars' authority. Under the Settlement the tenants were favourably situated; moreover, there were more lands in Bengal than there were tenants to till them. Accordingly, the zemindars were threatened with an impasse.

To relieve the situation in the interest of Government whose need for money was great and who had to suffer for defaults in payment of revenue by the zemindars, the Haftam or Regulation VII of 1799 was enacted for enabling proprietors and farmers of land to realise their rents with greater punctuality. The Regulation gave the landlords practically unrestricted power of distraint and in many cases of arrest of the defaulter's person. They were empowered to distrain the defaulter's crops and other personal properties without notice to any court or public officer. Mr. C. T. Buckland wrote thus about the necessity of the Haftam: "It may not be generally known that the Regulation of 1799 was enacted in order to save the perpetual settlement, the existence of which was imperilled by the excessive independence which the ryots enjoyed. For although it is now the custom to say that the rights of the ryots were not properly protected by the perpetual settlement, it turned out at the time that they could take such good care of their rights that the zemindars could not collect rents from them until the

Government came to the rescue of the zemindars and made the raiyats liable to arrest for default of payment of rent."

The power of duress conferred by the Haftam upon the zemindar was not satisfactorily used in all cases and accordingly the Panjam Regulation V of 1812 was passed abolishing the power of arrest and amending the law of distraint with a view to mitigate the severity. A written demand upon the tenant was made a condition precedent to the distraint of the defaulters' property. Ploughs, implements of husbandry and cattles used for agriculture were absolutely exempted from distress and sale. All attachments for rent were to be withdrawn, if the tenant disputed the demand and gave security binding himself to institute a suit within 15 days.

The Patni Regulation of 1819 was intended for the benefit of the landlords on whom the assessment of 90 p.c. of the assets at the Settlement proved very hard.

Regulation XI of 1822 was passed giving power to the purchaser of estates sold for arrears of revenue to evict all tenants with the exception of khudkhasht raiyats or resident and hereditary cultivators who were not to be ejected, though their rents might be enhanced after service of notice. This Regulation was superseded by Act XII of 1841 giving purchasers of estates sold for arrears of revenue ampler powers of enhancing the rents of tenants.

It was in 1859, that the law of rent took a definite codified shape. The Act X of 1859 was originally a Bill designed only to amend the law for the recovery of rent in the Bengal Presidency, or as it was put at that time, to provide for "the revision and consolidation of the distraint and summary suit law which (then) comprised the law for the recovery of rent." The substantive portions of the Act, in the opinion of the Government, were not designed to create or limit the rights of either parties, landlords or tenants; they were meant to

be merely declaratory of the law as it stood. This was clear from the speech of Mr. Currie, the mover of the Bill on the 10th of October, 1857. Mr. Currie said that in enlarging the jurisdiction of the Collectors for the trial of these (rent) cases, he had thought it necessary to re-enact in a clear and distinct form those provisions of the existing law relative to the respective rights of landlords and tenants with which they would principally have to deal with in the discharge of their duty. The changes made by the Select Committee did not also alter materially the customary rights of landlords and tenants. But the question of rent enhancement was practically smuggled in the provisions of the Act. It was not discussed by the Select Committee and "attracted almost no consideration when the Bill was under consideration." The grounds of enhancement,¹ as laid down in Act X of 1859, were :

"No ryot having a right of occupancy shall be liable to enhancement of the rent previously paid by him except on some of the following grounds, namely :

(1) That the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent.

(2) That the value of the produce or productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot.

(3) That the quantity of the land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

1. The Act opened up the possibilities of litigation and it was only the increased income which helped the new principle to function.

There was some discussion in the Council on the first ground but the second ground, in which lay the germ of future trouble, was not discussed at all. Before the Act, the enhancement of rent was guided by customary, and not economic, considerations. The first case of enhancement under Act X of 1859 was the famous suit of Hill versus Iswar Ghosh, decided by Sir Barnes Peacock in the High Court on the 24th September 1862. In this case, the Chief Justice asserted the absolute applicability to Indian land rent of the strictest doctrines of Political Economy. It was laid down: "The absolute value of the produce being ascertained, the enhanced rate is to be arrived at by considering what part of such increased value ought to be apportioned to the tenant, as the produce of his capital, labour etc., and what part of it is rent, that is, as it has been defined (by Malthus), "that portion of the value of the whole produce which remains to the owner of the land after all the outgoings belonging to its cultivation, of whatever kind, have been paid, including the profits of the capital employed, estimated according to the usual and ordinary rate of agricultural capital at the time being."

It may be held that this decision was a fatal blow to the customary rights of the tenants: "it ignored the existence of any beneficial right of the ryot in the land other than that arising from the investment of his capital and labour. It avowedly cancelled all distinctions between ryots having rights of occupancy and mere tenants-at-will."

Sir Barnes Peacock suggested amendment of the Act which was likely to create a large number of litigation, harassing to both landlords and ryots.

In the Great Rent Case of 1865, the full Bench held that "a holding for 12 years, whether wholly before or wholly after, or partly before and partly after the passing

of the Act, entitles a ryot to a right of occupancy under Act X of 1859."

Justice Macpherson was for the rule of proportion: as the old value of produce is to the old rent, so is the present value of produce to the rent which ought now to be paid"—is the rule to be adopted in absence of customary rates.

Justice Phear propounded that to determine fair and equitable rent, the Collector was to enquire if the arrangement contained express stipulation as to rent, or if the ryot was legally entitled by custom to any definite share of the produce of land or that the custom was to be complied with and rates adhered to.

Justice Peacock held that the rule of proportion was not applicable and that the rule laid in *Iswar Ghose v. James Hills* should be followed.

The Great Rent case restored the ryots to the beneficial position from which Sir Barnes' decision had ousted them.

In 1866, the Revenue Board admitted that no fresh legislation was to be hurried on and if ever law were touched, it should be only for the introduction of fundamental alterations of principles.

In 1869, a Bill was passed in the Bengal Council transferring the trial of rent suits from the Revenue to the Civil Courts on the ground that rent questions would be better dealt with by regular judicial officers than by the executive officers. This transfer was extremely favourable to the tenants as the Civil Courts required more clear proof in matters of enhancement and they were less summary than the courts of Deputy Collectors and other Revenue officers.

At this stage, jute trade showed considerable development and it brought money to the ryots. The ryots got

perpetual leases by offering bonuses to the improvident landlords. Large money flowed into the hands of the ryots with the result that the number of litigation increased and the ryots learnt to combine against the landlords. The Government tried to give a different picture : "owing to the absence of sufficient agency in Bengal, those parts of the Regulation which gave rights and privileges to the zemindars have not only been maintained but stretched to the utmost, while those parts which restrained them and limited their rights have been utterly set at naught." (Government Resolution of the 30th May, 1873).

In 1873, there were agrarian ryots in Pabna. The causes stated were : high rate of collection, an uncertainty as to how far the amount claimed was due, violent character of the zemindars' agents.

In this connection it must be noticed that a tendency among the ryots to combine and resist the landlords became manifest. In East Bengal, there were organisations for agricultural unions. The immediate causes of the growing independence of the ryots were :

- (a) increasing knowledge of their legal rights;
- (b) marked increase of wealth;
- (c) decrease in power and influence of the landlords.

Moreover, there were other circumstances which helped the ryots to resist the landlords. The transfer of rent suits from Collector's Courts to Civil Courts was responsible for the position that the landlords got more law and less rent; the recovery of rent became a longer and costly business; the rights of ryots were more scrupulously and carefully dealt with; decisions of late years were in favour of the ryots. Even when agrarian ryots broke out, Sir George Campbell's

plan was to wait and interfere only at a time when the disputants were reduced to a state of helpless exhaustion by long and indeterminate conflict. Sir George Campbell held for reasons best known to him that the differences between the zemindars and ryots throughout Bengal were such as to require a very thorough revision of the substantive law and his main reason for leaving matters regarding agrarian troubles alone was avowedly his thought and belief that if he did so, the ryots would on the whole have the best of it. Thus circumstances pointed to the fact that the zemindars were in a worse position. The landlords found the ryots profiting largely by the enhanced value of the produce of what they regarded as their property, and they (the landlords) desired not unnaturally to intercept some portion of the increased return some way or other. The action taken by the authorities against the levy of illegal cesses led them further to desire to place the demand on the safe footing of higher rents. But the ryots being solvent and more sympathetically dealt with in Civil Courts combined and refused enhancement of rent. It was ruinous on the part of the landlords to sue the entire body of peasants. It was this uncomfortable position of landlords which led Sir Richard Temple in 1875 to introduce a Bill in the Council. Sir Richard Temple said: "I apprehend that the speedy decision of suits between landlords and tenants is very important to the future tranquility of Bengal and that the Land Revenue authorities are much better fitted than the Civil Courts can be to decide these suits to the advantage of both parties concerned."

Sir Richard Temple introduced a Bill in the Bengal Legislative Council with the full approval of the Government of India, proposing that the Government should have the legal power of dealing effectively with agrarian troubles through the agency of the Land Revenue authorities. The interposition of the Collector would be done on the applica-

tion of either parties, landlords or ryots, and would be limited to matters of rent and its rates.

The British Indian Association in extending support to the Bill as a temporary measure graphically described the situation in a letter dated 12th June 1875: "The chief cause of this misunderstanding between the zemindar and ryot is traceable to the uncertainty and indefiniteness of the law governing the relations between the two. Whether as regards the recovery of rent or the enhancement of rent the law is not precise, distinct or adequate; the result is that the landlord and tenant cannot clearly comprehend their rights and relations to each other; there is consequently going on a constant struggle between them to assert what they conceived to be their respective rights. They appeal to the courts for the arbitrement of their disputes, but in vain; on the contrary, confusion is worse confounded by many conflicting decisions passed by the courts, leading each party to believe alternately that he is in the right; and this misconception is a fruitful source of the many mischiefs which are so much deplored on all sides. Now-a-days, if a number of ryots were disposed to combine and resist payment, they could keep the zemindar at bay, for any length of time, and thus ruin him ultimately. The rent suit under the existing law is a regular civil suit, and where it is contested by the ryot is not ordinarily disposed of in less than six months. It is dilatory, expensive and harassing." The Association urged that greater facilities ought to be given for the realisation of rent and definite rule ought to be laid down for the enhancement of rent. At the same time, the British Indian Association protested against the surrender of the examination of rights in connection with the land to the executive authorities.

Sir Richard Temple emphasised the importance of the Bill by drawing attention to the conditions then prevailing in Eastern Bengal. This was the position:

(a) That there are large disputes pending between zemindars and ryots regarding the degree in which rent may be enhanced by reason of the increase during recent years in the value of the produce of the land.

(b) That when these disputes become embittered, then, besides the question of enhancement, other questions become involved, such as the levy of certain cesses, the payment of alleged arrears, as the past rates of rent, the area of actual holdings etc.

(c) That under such circumstances zemindars have sometimes attempted or may attempt, to collect rents by force, which attempts are forcibly resisted, the result being breaches of the peace.

(d) That the cessation of agrarian riots after the Pabna trouble is due to the action of executive authorities.

The Advocate General was doubtful whether the Bengal Council had power to withdraw rent suits absolutely from the Civil Courts contemplated in the Bill. Sir Richard Temple as an alternative proposed that the decision of the revenue authorities should only be provisional and subject to revision if the parties chose to go to the courts afterwards.

The Bill became law as Bengal Act VI of 1876 (the Agrarian Disputes Act) which was to remain in force for three years. The Agrarian Disputes Act ran out its time without ever being brought into operation. But it is held that the mere fact of its existence on the Statute Book exercised the tranquilising effects desired. The Act allowed the Government to interfere on the application of either the landlords or ryots; moreover it was to be brought into operation where actual agrarian disturbance was either present or seriously threatened. The Government contention was that

the District officers were so alive to the importance of preventing disturbance that there was no occasion for the application of the Act.

Sir Richard Temple did not stop at passing the Agrarian Disputes Act. He thought of remedying the unsatisfactory nature of the general rent law.

Sir Richard Temple in his minute of the 25th May 1875 stated:—"The rent law of 1859 established the principle that the landlord is entitled to some share in the increase. When the law declared in 1859 that the rent of an occupancy ryot should be raised unless under certain specified circumstances of ordinary occurrence and re-affirmed this in 1869, it clearly contemplated that the landlord should have some share under those circumstances. The same principle has been repeatedly acted upon by the High Court. We cannot, I think, recede now by any legislation from that principle."

In his minute of the 18th April 1876, Sir Richard put forward his proposals, which were briefly, that the difference should be ascertained between the rent of the occupancy ryot and the average rent of the non-occupancy ryot in each district: that of this difference a certain share should be allotted to occupancy ryot and the remainder to the landlord, and the rent be adjusted accordingly; provided always that the rent of the occupancy ryot be fixed less than that of the non-occupancy ryot by 20 per cent, and that full allowance be made for the value of the ryots' improvements. He proposed to allow to occupancy ryots of 20 years' standing one-fifth of the above difference; to such ryots of 30 years' standing one-third; and to those of 40 years' standing two-thirds.

On the 29th August 1876, Sir Richard addressed to the Government of India, asking leave to bring in a Bill in the

Bengal Council, to amend or supplement the rent law, and providing specially for the following matters :—

1st—In cases where an occupancy ryot is liable to enhancement of rent under section 18 of the Act of 1869, such enhancement is either to be regulated by the principle that his rent shall be less than the ordinary rent of a non-occupancy ryot by a certain percentage, from 20 to 25 per cent, or else is to be calculated on a certain proportion of the value of the gross produce, from 15 to 25 per cent, provided always that no occupancy ryot shall be entitled to claim under the foregoing rule any abatement from the rent which he has heretofore paid.

2nd—The definition of an occupancy ryot, as given in section 6 of Act of 1869, is to be somewhat extended, so as to include ryots cultivating under other ryots in certain classes of cases.

3rd—The right and interest of an occupancy ryot to be rendered liable to sale for default in paying rent and also transferable by private agreement.

4th—The process for realising arrears of rent in undisputed cases to be simplified by the court or other deciding authority—Collector or other—being empowered, on application from the landlord, to issue a notice to the ryot, requiring him either to pay or to appear and show cause to the contrary; in the event of the ryot neither paying nor appearing the court to order attachment and sale of the defaulter's property.

5th—The rents payable by tenure-holders or others possessing a permanent transferable interest in land, intermediate between the proprietor of an estate and the ryot—when not fixed by special agreement or by the

circumstances of the tenures—to be determined according to a standard similar to that of the occupancy ryots but more favourable by 10 per cent.”

This was Sir Richard's plan. The Zemindars of Bengal submitted a Memorial urging a resettlement of the rent laws of the country and praying amongst other things, (1) that the present rent law of the country be altered with a view to facilitate due enhancement of rents and the prompt realisation thereof; (2) that the natural market or competitive rate of rents be declared to be the legal rent due from all ryots without any deduction whatever in favour of ordinary occupancy ryots or of those of 20, 30 or 40 years' standing; (3) that the low rents paid by non-occupancy ryots newly settled in backward localities be not taken to represent competitive rates; (4) that in cases where there is any doubt as to what competitive rate is 20 per cent or one-fifth of the money value of the gross produce of land be declared as the rent to be decreed; (5) that it be provided that in no case the rent of a ryot be enhanced so as to be more than double the previous rate and that after once a ryot's rent has been enhanced, no further enhancement be decreed within five years; (6) that a decree for arrears of rent be made to have the effect of one for ejectment; (7) that some cheap, speedy, and effectual procedure be devised for the recovery of arrears of rent.

There was delay in obtaining the orders of the Secretary of State upon his proposals and Sir Richard Temple on the 5th January 1877, shortly before leaving Bengal recorded a minute proposing to go on with the procedure sections of the draft Bill in order to furnish the zemindars with a simple mode of procedure for realising undisputed rents.

Then came Sir Ashley Eden before whom the complaints of the zemindars regarding the dilatory action of the

Civil Courts in the matter of the recovery of even undisputed rents were placed. Sir Ashley understood the complaints and expressed himself in favour of making the right and interest of the occupancy ryot saleable in execution of decrees and transferable by private agreement.

A Committee consisting of Messrs. Reynolds and Mackenzie, Maharaja Joteendra Mohan Tagore, Rajah Degumber Mitter and Babu Kristo Das Pal was appointed to consider the details of a summary procedure of the kind required. The Committee after examining the situation found that it was impossible to enlarge the powers of the zemindars without protecting the ryots against unscrupulous landlords by creation of quarterly instalments of rent payment in lieu of the existing system of nominal monthly instalments for each of which a landlord can sue and by the introduction of a proper system of compulsory counterfoil receipts..

In 1878, a Bill was drawn providing a summary procedure for the realisation of arrears of rent not over twelve months due when it was shown to the satisfaction of the court that rent at the rate alleged had actually been paid for the year preceding or had been accepted in writing by the tenant and also providing quarterly rent instalments, counterfoil receipts, registration of transfer of occupancy ryots, sale of occupancy holdings in execution of rent decrees and other matters.

In introducing the Bill, Mr. Mackenzie said : "The Bill proposes that where a landholder has been actually in receipt of rents at a certain rate, he shall be able to recover arrears at that rate, and when they are not more than 12 months old, by moving the Civil Court to put in force a summary procedure to that embodied in the Bills of Exchange Act of 1866. It will be seen that under this procedure, the land-

lord has only to file his plaint to secure the issue of a notice to the defendant calling upon him to obtain leave from the Court within 14 days of the service of notice, to appear and defend the suit, failing which the plaintiff will at once obtain a decree. Leave to defend will only be given on the defendant's paying into court the sum demanded or on his satisfying the court that he has a defence and on such terms as to security, framing and recording of issues or otherwise, as the court may seem fit. No appeal will lie from the summary decree on the part of the judgment-debtor unless he deposits its amount with costs, though the court may under special circumstances set aside its own decree and go into the merits of the case."

The Bill further proposed that the occupancy tenure should be transferable and heritable, provided that the transferee was a genuine cultivating ryot. Mr. Mackenzie went out of his way in his enthusiasm of proving that the ryots had then valuable rights.¹

A Select Committee of the Council was entrusted to examine the provisions of the Bill. The Select Committee did not support the passing of the Bill without examining the collateral issues connected therewith.

The Select Committee suggested the appointment of a Rent Commission.

1. The great body of resident cultivators possess a fixed hereditary right of occupancy in the fields cultivated by them or at their risk and charge, their tenure being independant of any known contract. They cannot justly be ousted so long as they pay the amount of value demandable from them—Holt Mackenzie in 1832. "I am satisfied both from analogy and evidence that the *khodkast* or resident cultivator of Bengal was the ordinary type of hereditary or proprietary ryot common throughout India"—Sir William Muir's "Notes on Tenant right in all parts of India."

The Rent Law Commission submitted a report and prepared a draft Bill "to consolidate and amend the law of landlord and tenant within the territories under the administration of the Lieut. Governor of Bengal." The Commission suggested changes in the substantive rent law: new ideas were introduced and new principles incorporated. According to Sir Ashley Eden, the Commission's report and the Bill presented on the whole a reasonable basis for legislation. In his opinion, a general revision of Act X of 1859 was urgently called for and in the interest of Government, of the landowners themselves and of the agricultural community at large, it was very desirable to define and strengthen the position of the great mass of cultivators while giving landlords a reasonably cheap and effective procedure for regulating and revising rent and recovering their just dues. "He (Sir Ashley Eden) would like to see the Bengal ryots as a class secured in the enjoyment of those rights which the ancient law and custom of the country intended them to have, protected against arbitrary eviction, left in the enjoyment of a reasonable proportion of profits of cultivation and in short placed in a position of substantive comfort, calculated to resist successfully the occasional pressure of bad times. He would at the same time not seek in any way to diminish or encroach upon the existing emoluments of zemindars or other rent-receivers. On the contrary, he would like to help them to realise their rents more punctually; and even where these are now excessive, he would not seek to interfere to lower them. He would substitute for the present large and uncertain power of enhancement which the law seems to give to landlords, but which they are quite unable to utilise, a reasonable system of regulating rents under the control and direction of Government officers, such as the universal custom of India originally favoured and recognised. The zemindar will thus be admitted to share in the growing prosperity of the country upon fair terms; and though they will not have all that they

claim in theory, they will have a great deal more than they are now able actually to enjoy in practice. They will cease to feel the irritation of unsuccessful desire, while their tenants will cease to look upon them as their natural foes."

The policy outlined was fair. The chief points in the draft Bill prepared by the Rent Commission were: establishment of occupancy tenure upon a broad and permanent basis; protection to settled cultivator against arbitrary eviction; no eviction of any ryot on any ground save persistent failure to pay a fair and reasonable rent; occupancy tenure to be kept in the hands of bonafide cultivators and discouragement of the subletting by occupancy tenants; creation of a substantial tenantry free from debt; the right of pre-emption to the landlord (on understanding that in resettling the occupancy tenure with a ryot of his own selection, he must pass it over to him as an occupancy tenure); a modified system of distraint through the instrumentality of courts without damaging the tenants' position.

The Government felt that a recognition of occupancy rights in the general body of the cultivators of Bengal was incumbent upon them and was really in no way an infringement of the rights or detrimental to the interests of the zemindars. And the Government also denied that the draft Bill prepared by the Rent Commission was simply revolutionary and confiscatory in character. The Government maintained:

(a) that from the year 1863 downwards, the necessity of undertaking some time or other a radical revision of Act X of 1859 has been recognised by the Government, the courts and the public;

(b) that from the outbreak of the Pabna agrarian riots in 1873, this necessity has been recognised on all hands as

urgent and that too in the interests as well of the landlords as of the tenants;

(c) that from the year 1875, the local Government have with the concurrence, approval and aid of all parties, been endeavouring to arrive at some conclusion as to the shape which such a revision of the law should take;

(d) that until it was found that the report of the Rent Commission failed to settle the disputed points entirely in favour of the landlords, none were more eager to have an amended Rent Law than the landlords themselves.

The Rent Commission recorded their verdict against the summary methods of justice and advocated comprehensive changes in the substantive law between the landlord and the tenant. The Commission in paragraph 174 of their Report said: "In order that justice may be done, truth must be elucidated; and the elucidation of truth requires time and patience. Any attempt to abridge judicial enquiry by arbitrary and abnormal presumption in favour of either party, which by precluding the production of evidence may enable judges to arrive at rapid conclusion, is to our minds retrogressive and unsafe." In their opinion, the adoption of any summary procedure for rent suits would be to choke off litigation and not to administer justice.

The Famine Commission in their report emphasised the urgency of rent-law strengthening the position of the ryots. The Commission stated: "It is only under such tenures as convey permanency of holding, protection from arbitrary enhancement of rent, and security for improvements, that we can expect to see property accumulated, credit grow up, and improvements effected in the system of cultivation. There could be no greater misfortune to the country than that the numbers of the occu-

pancy class should decrease and that such tenants should be merged in the crowd of rack-rented tenants-at-will who owning no permanent connection with the land, have no incentive to thrift or improvement. It is desirable for all parties that measures should be framed to secure the consolidation of occupancy rights, the enlargement of the numbers of those who hold under secure tenure, and the widening the of limits of that security, together with the protection of the tenant-at-will in his just rights and the strengthening of his position by any measure that may seem wise and equitable."

The draft Bill prepared by the Rent Commission did not meet with Government approval in all its details. Mr. Reynolds, Secretary to the Government of Bengal and a Member of the Legislative Council of the Governor General was placed upon special duty in connection with the revision of the Rent Law with instructions to receive and consider all the various reports and recommendations that would come to the Government. Mr. Reynolds also prepared a draft Bill desiring in the main (a) that every ryot who acquired an occupancy right under Act X of 1859 or Act VIII of 1869 should be deemed to have a right of occupancy in all lands held or cultivated by him, no private contracts being allowed to defeat it ; (2) that when a ryot abandoned his occupancy holding or when a zemindar bought out such a ryot, the zemindar might dispose of the land at his will but not as to bar the acquisition of occupancy right by the next resident ryot, to whom he might let it ; (3) that the rent of occupancy ryot could not be forced upto competition rate.

Such a legislation was recommended because the Government held, first, that they had right to interfere as long as they did not confiscate the income of the landlord ; secondly, that the ryots had rights founded on ancient records and usage.

The British Indian Association voicing the grievances of the landholding community stated that the issue before the Government was how to devise ways for speedy disposal of rent suits, resulting in prompt realisation of the landlords' dues from the ryots but Sir Ashley's Administration allowed the situation to shape in a way prejudicing the rights of the landlords. The Association criticising the launching on such a comprehensive rent-law on the following grounds stated :

(a) It was an accepted maxim in legislation that no change in law was to be made unless there was an absolute and well-ascertained necessity for it.

(b) Such a necessity should be expressed by the general sense of the people, by a deeply and widely felt want, by some administrative difficulty or by some exigencies in the social economy of the country.

(c) No such condition existed for a change in the substantive rent law of Bengal : no want or wish was expressed for a change, no administrative dead-lock occurred.

(d) The Government led the way by the appointment of the Rent Commission.

(e) No proper enquiry was made by Government as to its necessity ; execution preceded enquiry, a foregone conclusion took the place of unbiased investigation, assumption that of logical deduction.

The landholders levelled the charges against the Government not without wrench. But the Administration had their own notions and proceeded upon their work.

When the Bengal Tenancy Bill was sponsored, the public agitation against it was vehement. A meeting of the Central

Committee of the landholders of Bengal and Behar for the purpose of memorialising the Secretary of State and the Viceroy on the subject of the New Bengal Tenancy Bill was held at the Town Hall on the 17th November, 1883, Dr. Rajendra Lal Mitra, LL. D., C. I. E., presiding. In criticising the measure, Dr. Rajendra Lal Mitra said: "The cardinal principle on which the report of the Government is based is policy; not justice, not right, not contract, not old binding laws and regulations, but policy. It is this youthful, enticing, dominant wench, policy, that overrides the pure and humble demands of the elderly, quiet, homely dames, justice and fair play. I look upon the right of sale as one of the shibboleths of Radicalism of the day. It is the drop of rennet which curdles the whole of the Government milk of human kindness. I say this right of free sale is a right which will not only impoverish the zemindars and ride roughshod over legal rights but reduce the ryots to the level of day labourers and convert them into candidates for emigration to Demerara.....one great objection on the part of zemindars to free sale of occupancy tenures is the inevitable evil of being forced to receive rival and inimical zemindars and wicked, mischievous and intriguing ryots in their estates."

Maharaja Sir Joteendra Mohon Tagore said that they were visited with a law "which will deprive them of rights that they have either inherited from forefathers or paid for in hard cash, in firm reliance upon the good faith of the Government which will deteriorate the value of their property and cripple their very means of subsistence and reduce them to the same dead level system that has necessitated Relief Acts in the Deccan and other parts of the country."

Maharaja Narendra Krishna Bahadur said: "The practically one-sided character of the Bill which curtails the rights of landlords and confers additional privileges and rights on

the ryots will, it is feared, boulder the existing peaceful state of things and determine the ryots to assume a hostile attitude to the zemindars. Its tendency is to ruin the landlords, to sow the seeds of dissension and litigation between them and their ryots, to create distrust in the minds of the people and make the Government break its oft-repeated pledges."

Babu Joykissen Mukherjee laid his fingers on the sore point when he said: "The money hitherto expended in cultivating the lands and the maintenance of families will be devoured by unprincipled village Mooktears and Mahajuns and the stamp fees. Almost every transaction hitherto amicably settled will be taken into court and the ryots will become a prey to court underlings."

At a meeting of the landholders and zemindars of Bengal and Behar on the 29th December, 1883, the proposed Tenancy Bill was hotly criticised and the following resolutions were passed nem con :

"That this meeting desires to record its opinion that the Government has entirely failed to show that any grounds exist for introducing into the Bengal Tenancy Bill revolutionary provisions which are a novel departure from the ancient custom and the existing law relating to landlord and tenant which will most injuriously affect all classes of the community who are in any way interested in the land."

"That this meeting is of opinion that the Bill, if passed into law, will be detrimental to the peace and tranquility of the country by fostering disputes and litigation between all classes of the agricultural population and thereby interfere with the general welfare of the community."

"That if the deprivation of the landlords of their just rights inherited from generation to generation confirmed by

the Permanent Settlement and consecrated by a century of British rule be deemed essential to the welfare of the tenantry the Government be solicited to consider the justice of allowing the zemindars to surrender their estates on receiving such compensation in money as will, when invested in Government securities, produce a permanent return equal to their present income."

"That as thousands of estates have been made of waste and other lands upon the faith of zemindars being entitled to their present rights, suitable clauses may be introduced into the Bill for providing compensation to the zemindars for the loss of their rights."

"That in view of the provisions of the Bengal Tenancy Bill which will deprive the landlords of their legitimate prestige and influence and reduce them to a state of helplessness, this meeting is of opinion that the Government should be requested to relieve the zemindars of the duty of collecting the road and public works cesses and of such other services and obligations as are now cast upon them by law or custom."

The official opinions on the Bengal Tenancy Bill were not also encouraging. Out of a total of 10 Commissioners, the great majority were opposed to it. Mr. Lowis, a Commissioner, said: "Speaking generally, I may say that the introduction of this measure is viewed by all whom I have consulted on the subject with the gravest apprehension, as tending to embitter the relations between the landlord and tenant, and likely to lead to a crop of litigation with all its accompanying frauds and chincanery which must in the end injure and not benefit the ryot." Mr. Beames, another Commissioner, said: "The ryot suffers from causes over which no Government can have any control; the country is over-peopled; and the intensity of

the struggle for existence is due principally to this cause and not to the incapacity or bad management of the zemindars. Every one will marry and will have heaps of children; no one will emigrate, a vast majority will grow nothing but paddy, and the poorest will spend in advance the earnings of ten years on a marriage feast, or a religious ceremony. It is very doubtful whether any legislative measures will improve the condition of people whose manners, customs, and prejudices are so utterly incompatible with improvements as these." The Collector of Jessore said: "I consider the Bill to be a most arbitrary, partial and unjust measure. It will sever all friendly ties between landlords and tenants, and lead to a state of things that must have disastrous results. There is nothing in it that will facilitate the collection of rents and very little that will do any real good to the ryot. In fact, the Bill seems to have only one object and that is, to stamp out landlords."

The Bengal Tenancy Act of 1885 was passed on the 14th of March with the professed object of restoring ancient rights to the cultivators of Bengal. But in fact it was a financial measure, a subtle move for the obvious and undubitable purpose of obtaining additional revenue from land, contrary to the terms of the Permanent Settlement. The passing of the measure was characterised by the critics as a "political crime", because it was introduced in March 1883 with the distinct declaration from the Government that "its objects were to assist the zemindar in the recovery of his rent and to secure the ryot in the cultivation of his field." But the provisions of the Act were calculated "to deprive the zemindars of the means which the existing law gave them for the recovery of rent, to dispossess them of valuable proprietary rights in favour of a new class of middlemen and to invest the latter with the power of rack-renting their tenants, the cultivators of the soil." The ulti-

mate object of the Act was to despoil all classes connected with the land. The Act provided a contrivance for eluding and disregarding the Permanent Settlement: a direct attack thereon was thus avoided. The complicated provisions of the Act prevented the zemindar from obtaining his legitimate share and "diverted the bulk of profit into the hands of a new class of middlemen who not being a party to the Permanent Settlement, may be taxed at the discretion of the Government."¹ The provisions of the Act increased the difficulties of the zemindars in the recovery of rent, confiscated their proprietary rights, encouraged petty capitalists to acquire such rights and exercise them as middlemen, set class against class by greatly fostering legislation and accomplished the ruin of both the proprietors.

The following extensive extracts from the Minute of the Chief Justice (the Hon'ble Sir Richard Garth), dated 6th September 1882, on the Bengal Rent Bill would set forth with remarkable clearness the principal wrongs inherent therein :

“I take it to be clear that any Government in case of real emergency, has a right, so far as it is necessary, to interfere with vested rights, to whomsoever they may belong, or howsoever they may have been created. But then I take it to be equally clear that without some such actual necessity, no Government is justified in interfering with the vested interests of any class of its subjects; more especially when those interests have been created and defined, after due consideration, by the State's own legislative enactments.

“For myself, I see no such necessity; and I am bound to say that amongst the many complaints on behalf of the ryots, which have been published by the Government in

1. A paper by Mr. J. Dacosta on the Bengal Tenancy Act of 1885, published in London, May, 1885.

connection with this subject, I have been unable to find a single statement that the ryots themselves desired anything of the kind.

"It was proposed for the first time by certain members of the Rent Commission; and it is supported, as I understand not upon the ground of actual necessity, but because in the opinion of those gentlemen, the ryots were, or ought to have been, in a better position some ninety years ago than they are now, in the interest of the State, to place them in that position.)

"The landlords complained principally of two things; first, that the machinery of the Civil Courts was not sufficiently effective to enable them to realize their rents in time to pay the Government revenue; and secondly, that either the provisions of the Rent Law were too strict, or the construction which the Courts have put upon them too narrow, to enable the landlords to enhance their rents as readily and as largely as the Legislature had intended.

"The complaints of the ryots were not so well defined. They appear to have been brought to the notice of the Government, not by the ryots themselves, but for the most part by executive officers, whose duty it was to quell the disturbances, which arose from time to time in the agricultural districts, and to inquire into the causes which led to them. I believe, however, that I am correct in stating, that their principal matters of complaint as disclosed in the published papers, were :—

1stly—Abuse of the power of distraint;

2ndly—Illegal attempts to enhance rents, and to enforce the measurement of lands;

3rdly—The imposition of abwabs and cesses in violation of the law; and

4thly—The refusal and the neglect of landlords to give proper receipts for rent, and their omission to keep regular accounts, which rendered uncertain the demands made upon the ryots, and gave rise to constant litigation.

“But whilst I yield to no man in the earnest wish to see all necessary and wholesome reforms carried out, I confess I view with horror and dismay the revolutionary provisions of the present Bill. It appears to me absolutely cruel, to sacrifice wantonly and unnecessarily the rights of one section of the community for the supposed benefit of another; to violate laws and usages, which have been sanctioned by the Courts and the legislature for nearly a century; to unrip a solemn settlement of vexed questions, which was made by the Bengal Legislature no later than twenty-three years ago; and all this, not for the purpose of meeting any actual complaints, or rectifying any proved abuses, but merely to place the ryots in a position, which certain well-meaning, but as I think mistaken, members of the Rent Commission imagine that they occupied in the year 1793.

“The changes to which I particularly allude, and which appear to me especially unjustifiable, are the following:—

- 1st.—The unwarrantable extension of the right of occupancy as settled and defined by the Act of 1859;
- 2nd.—The arbitrary limits now sought to be imposed for the first time upon the enhancement of rents;
- 3rd.—The proposed rules in Chapter V to control the letting of land for building purposes;
- 4th.—The transferability of ryoti tenures, without the consent of the landlord;

5th.—The exemption of occupancy tenures from being sold in execution for the debts of their owners; and

6th.—The retrospective effect which is given to some of the proposed enactments, entirely in favour of the ryots, and against the landlords.

“These changes, I repeat, were never asked for by the ryots before the appointment of the Rent Commission. They are the result, as far as I can ascertain, of certain extreme views, which have been adopted by two of the younger members of that Commission; and I must add that the ground (if it is worthy to be called by that name) upon which the authors of the Bill pretend to justify their interference with the rights of the zemindars, appears to me about as transparent a pretext as ever was presented to the public.

“It is said that as the zemindars are asking for a reform of the law in their own favour, the Government is justified whilst redressing their grievances, in readjusting the whole law of landlord and tenant for the last ninety years. Why, they might just as well say that, because the zemindars were to ask the Government to enforce their rights more effectually under the Permanent Settlement, the Government would be justified in reviewing that settlement, and re-adjusting its terms altogether.

“What the zemindars of Bengal now ask, is nothing more than to have their present undoubted rights duly enforced. They want no new privileges, and they certainly ask for nothing which the Rent Law of 1859 did not intend to give them. They only want due payment of their rents, and such an enhancement of them from time to time as the Rent Law intended to allow. And how does this justify the Government in going behind the Act of 1859, and taking away from the landlords the rights which that Act gave them? No; if

it is necessary, as a matter of public policy, to deprive the landlords of their rights, let us at least be honest about it, and say so; but don't let us attempt to thrust such a blind pretence down the throats of an intelligent people.

"But when we consider that upon the strength of those views it is now seriously proposed to deprive the landowners of this Province of rights and privileges, which they have enjoyed for nearly a century; to relegate them to a position far inferior to that which they occupied before the Permanent Settlement; to unsettle, and re-establish upon an entirely new footing the relations between landlord and tenant; and to upset a settlement of those relations, which was arrived at in 1859, and confirmed ten years later by another Act of the same Government, I think that the Bengal Public has at least a right to enquire upon what authority those views are founded and how far they are consistent with the opinions of the many distinguished men, who, as judges, statesmen and legislators, have administered and explained the law during the past ninety years.

"By the Acts of 1859 and 1869, the relations of landlord and tenant had been settled by the Bengal Government and upon the faith of that settlement many thousands of estates had been purchased by the zemindars, and many lakhs of rupees expended upon those estates.

"Now my object in drawing this comparison is two-fold. I wish to show :—

1st.—How entirely the landlords will be deprived by the proposed Bill of their former rights and position; and how little interest they will have for the future in the welfare and improvement of their property; and

2nd.—How completely the class of persons who in the future would hold the status of the occupancys

ryot, would have the advantage, both as regards profits and control, over all others interested in the land. The profits and the power which you are taking from the landlord you are giving to the occupancy ryot; and the liberty of contract which you think it is unsafe to entrust to the highest and best educated noblemen in the province, you are committing with the utmost confidence to the class who will fill the status of occupancy ryots.

"And now, what will that class be? Why, with all these advantages, the interest of an occupancy ryot must be a very valuable one, and it will be sought after accordingly. Here we may look to some slight compensation to the landlords for the rights of which they will have been deprived. The more valuable these occupation holdings, the more they will be the objects of competition; and the lower the rent, the higher the premium which the landlord may hope to obtain for any jotes that he has to dispose of.

"And is it at all likely that *bona-fide* ryots, the poor cultivators of the soil, will be able to purchase rights of this description? Will the mahajuns and the land-jobbers, the teshildars and ijardars, allow chances of this kind to slip through their fingers? This consequence has, I see, been already pointed out by many of the officers who have been consulted upon the Bill, and we may be assured that, if it passes, the speculators and the land-jobbers will soon be buying up all the occupancy rights. And what will then be the condition of the actual cultivators of the soil? I believe that the very best thing that could happen under these circumstances to the cultivating ryots, would be that the wealthy zemindars or their friends should themselves buy up the occupancy rights. It would probably be the wisest thing they could do; and they would doubtless, as a rule, prove far more lenient and considerate landlords than a set

of men who have no position or character to lose, who have had little or no education, and who would buy up these rights for the very purpose of screwing the last pice out of the cultivating classes.

“For these reasons I venture to think that the proposals of the Government with regard to the right of occupancy will not only be cruelly unjust to landlords, but will operate most injuriously to the very class which it is intended especially to benefit. You may change the law, but you cannot change human nature, nor secure the most valuable rights for the poorest class of the community. If the lot of the ryot is a hard one now, you may be sure that it will be still harder if Mr. Reynolds’ Bill should pass into a law.”

We have already seen that the principal matters of complaint on behalf of the ryots were :

- (a) Abuse of the power of distraint;
- (b) Illegal attempts to enhance rents and to enforce the measurement of lands;
- (c) The imposition of abwabs and cesses in violation of the law;
- (d) The refusal and the neglect of landlords to give proper receipts for rent; and their omission to keep regular accounts which rendered uncertain the demands made upon the ryots and gave rise to constant litigation.

The complaints of the landlords were :

- (a) ineffective machinery of Civil Courts to realise rents in time,
- (b) provisions of the Rent Law too strict to enable the landlords to enhance their rents.

It is really inconceivable that to remedy the complaints stated above, the Government would push forward a measure invading the rights and privileges of landlords. The unwarrantable extension of the right of occupancy and the transferability of occupancy holdings were matters which the situation did not cry for. The Rent Commission Report recommended transferability of the right of occupancy without the consent of the landlord. They permitted the ryots to sell their holdings but not to mortgage them. Their ruling idea was to create peasant proprietorship in Bengal. This virtue of transferability has wrought out ruin to the Bengal peasants. The minute sub-division and underletting has impaired the position of the peasants. Mr. Peary Mohan Mukherjee criticised the system of underletting to the extent of allowing a right of sub-occupancy to grow within a right of occupancy in an illuminating manner :

“The creation of a sub-occupancy right would cause a radical change in the position of a large class of ryots and lead to inextricable confusion in the determination of the respective rights of ryots and their sub-lessees. A ryot who has sublet a portion of the lands which comprise his holding will be a sort of middleman as regards that portion and an occupancy ryot as regards the remainder. There is nothing to prevent the sub-lessee, when he finds that he has substantial rights in the land, from sub-letting it in his turn to a second grade of sub-lessees who, although the actual cultivators of the soil, and the men whom it is intended to benefit, will have no rights at all.”

Accordingly, Sir Richard Garth also said : “I should have thought that the most effectual way of protecting such people (meaning the improvident ryots of Bengal) and preventing them from wasting their substance would be to secure them a permanent interest in their property by prohibiting the alienation of it in any shape or way. They might

be allowed to underlet in the case of minors, lunatics or others labouring under disability; and some means might be taken for protecting (for a time at least) present interests which have been created by way of under-lease. But I should have said that with these exceptions, it would be more prudent to prevent underletting altogether."

In a paper contributed to the October number of the *Calcutta Review*, 1880, Babu Ashutosh Mukherjee (as he then was) in making a review of the Report of the Rent Commission stated: "Where occupancy holdings have become transferable by local custom, the fact is a good proof that the custom is suited to the locality. If occupancy holdings are tending to become transferable in various parts of the country, depend upon it that the tendency will ripen into a custom wherever it is really suited to the locality and the introduction of the rule of transferability in other places cannot but prove mischievous. The development of custom is in all countries regulated by the law of the survival of the most suitable. With the information, the facts and figures at their command, for the Legislature to declare occupancy holdings throughout the territories subject to the administration of the Lieutenant Governor of Bengal to be transferable without substantial security or any other restriction whatever would not be taking the timeous step in aid and anticipation of salutary social and economic tendencies, which we believe to be the true function of legislation and which we sincerely rejoice to find implicitly postulated; but it would be simply taking a large leap in the dark. Moreover, free trade in occupancy holdings, though it may be the thing wanted and though it may be really desirable in countries where competition rules all economical relations, can hardly be the thing wanted or a really desirable thing in Bengal, the true political economy for which, as the report constantly insists, is the political economy of custom Every argument of custom, conve-

nience, sentiment, or even expediency converges to the conclusion that it is not advisable to make occupancy holdings freely transferable."

In a Minute dated High Court, the 8th January, 1880, Sir Richard Garth put the case against the transferability of occupancy holdings more poignantly when he said :

"By the Permanent Settlement zemindars were (subject to certain restrictions which are immaterial to our present purpose) left free by the Legislature to let their unoccupied land to ryots upon whatever terms they thought proper. They had almost as much freedom in that respect as landlords have in England. The terms upon which they let the land were a matter of contract; and the principle of demand and supply (whether of ryots or land) usually regulated these terms.

"Mr. Field expresses some doubt whether a khodkasht ryot, as long as he paid his rent, could be turned out of his holding by his landlord. But, however this may be, it is certain that before the passing of the Rent Law in 1859, a landlord could and did almost at pleasure, rid himself of objectionable tenants.

"To obviate this apparent injustice, Act X of 1859 protected a ryot from eviction after twelve years of occupancy, and prevented the landlord from enhancing his rent after that period under certain conditions.

"Now, however wise and politic this provision might have been, it seems to me impossible to deny that it operated as an invasion of the landlords' right as conferred upon him by the Permanent Settlement; and the only equitable ground upon which such an invasion could be justified would seem to be this, that if a ryot had approved himself as a good tenant by cultivating his land, and paying his rent

satisfactorily for so long a period as twelve years, it was only fair to him and no real injustice to the landlord, to continue him in his occupation and prevent his being ejected, without some sufficient reason.

“But assuming this to be the true view of the matter, what becomes of the justification for invading the landlord's right, if the ryot is to be allowed, as soon as he has acquired his right of occupancy, to get rid of it altogether? If the equity to the landlord consisted in his being permanently secured a good tenant, what becomes of the equity if you allow the ryot to transfer his interest?”

The Report of the Rent Law Commission and the Draft Bill prepared by them were the forerunners of the alarming and revolutionary changes wrought by the Bengal Tenancy Act of 1885. The legislation recommended by the Rent Law Commission was adversely criticised by an eminent jurist: “It was the pride and the boast of the authors of the Permanent Settlement that the agrarian polity which they established in Bengal was not founded upon abstract theories drawn from England or other foreign countries. But the legislation recommended by the Rent Law Commission is the practical fruit of a theory of the Permanent Settlement evolved from inedited state-literature; of a theory of peasant proprietorship which is merely an empirical induction from a second-hand knowledge of foreign land-systems; of a theory of equitable relief which is equally unknown to our own courts and to English chancery; of a theory of disclaimer which is the historical product of feudality, and of a theory of rent applicable to modern Bengal which the Commissioners have improved for themselves. Legislating for an agricultural population of 60 millions and concerning landed property of the annual value of more than 13 crores, the Commissioners had before them the scantiest information conceivable touching the actual condition and

various requirements of peasant population in the various districts of Bengal and the practical operation, whether for good or for evil, of the existing law of landlord and tenant."

The despatch of Lord Hartington, dated the 17th August 1882, pointedly stated: "Your proposal in the first place, annuls the distinction deeply rooted in the feelings and customs of the people between the resident or permanent and the non-resident or temporary cultivator. This, when your avowed intention is to restore the ryots to their ancient position and rights, appears to me anomalous and undesirable. In the next place, it abandons a principle on which the State law has been passed for nearly a quarter of a century and which was adopted in 1859 by the Legislature on rational and intelligible grounds."

The Act made room for the constant intervention of revenue officers in all the details of agricultural life. It diminished the value of the land in the market. The Maharaja of Darbhanga in the Council remarked: "We are embarking rashly on a sea of change and many will be shipwrecked on the voyage." Babu Peary Mohan Mukherjee warned the Council: "The landholders stand aghast at the dreadful vista of unmerited and uncompensated loss of power and prestige which the measure threatens them with and at the idea of the pains and penalties and the litigation by which zemindar and ryot are to be involved in one common ruin."

Lord Dufferin the Viceroy, in giving entire support to the Tenancy Bill said:—"I believe that the Bill is a translation and reproduction, in the language of the day, of the spirit and essence of Lord Cornwallis's Settlement; that it is in harmony with his intention, and is conceived in the same beneficent and generous spirit which actuated the framers of the Regulations of 1793."

In criticism of the Viceroy's assertion, the following from the pen of Mr. J. Dacosta was illuminating: "Now, if a comparison be established between the Regulations of 1793 and the Tenancy Act of 1885, it will be found that, while the former proclaimed and protected proprietary rights, the latter assails them under specious and inadequate pleas; while the former secured impartial justice by providing independent tribunals and deprecating the judicial interference of executive officers, as inconsistent with such justice, the latter imposes the judicial interference of executive officers in the common transactions of the agricultural and landed classes; while the former allowed and protected complete freedom of contract, the latter strictly suppresses such freedom and authorises the violation of existing contracts made in conformity with the law and usages of the country; while the former declared it essential to the prosperity of the country that the landlord should have the means of collecting their rents without being obliged to incur unnecessary delay and expense in legal proceedings, the latter aggravates a legal procedure which the Government itself has admitted to be almost intolerable; while the former by limiting the demand of the Government on the proprietors of land enabled them to exercise moderation towards the ryots, the latter, by transferring proprietary rights to middlemen liable to arbitrary demands from the Government, discourages moderation towards their tenants the cultivators. . . . The sudden and arbitrary suppression of the freedom of contract, the incessant interference of fiscal officers in everyday transactions of the people, the compulsory litigation imposed by the Act with its ruinous costs, anxieties and evil influences: these immediate results of the measure cannot fail to produce an amount of irritation of which no parallel may be found under our rule, excepting perhaps in the confiscation of proprietary rights which led to the insurrections of 1857-58 in the neighbouring province of Oudh and had to be repealed in 1859-60."

Miss Florence Nightingale describing the condition of the ryot said: "He is under-fed: yet always works hard. He is helplessly exposed to periodical famines. He is for the most part in debt." That this is an exaggerated picture can be proved from official testimony. Bengal was visited with a scarcity in 1873-74 but in the years that followed, there was a revival of prosperity. There is a popular notion that the Bengal Tenancy Act of 1885 was passed at a time when the condition of the ryot was deplorable and the conduct of the zemindars reprehensible. Such a notion was not grounded on truth. The condition of the ryot did not cry for legislative protection: the conduct of the zemindars did not invite punishment. Still, on the plea of the protection and welfare of the ryots, the landlords were punished and robbed of their rights.

The material condition of the peasantry of Bengal can be estimated from the official reports. References to some of them are given below:

In 1876:

"The material condition (of Rajshayee Division) is described as being generally prosperous and progressive. The soil is fertile, as well in the production of food grains as in jute, sugar-cane, tobacco, and other staples which are largely exported into other districts and to Calcutta." (Supplement to the Calcutta Gazette, August 30th, 1876).

"It is very satisfactory to observe that there was no complaint of distress from any part of the country (Chittagong Division). The people are described as being in a solvent and substantial position. Every man has either or indirect interest in land and a fertile soil and high wages both at home and in the neighbouring labour markets of British Burma render the condition of the cultivators and the

lower orders of the people easy prosperous" (supplement to the Calcutta Gazette, September 13th, 1876).

"It is said that the material condition (of the Presidency Division) is slowly and steadily improving" (Calcutta Gazette, September 20th, 1876).

"The material condition of the people (of Dacca Division) is reported to be one of steady improvement. Mr. Lyall, the Magistrate of Dacca, writes:—The condition of the ryots is excellent; they pay low wages and are getting high prices for rice as well as for their other crops; very nearly the whole of the benefits of the rise in price caused by the famine year is enjoyed by them." (Calcutta Gazette, September 20th, 1876).

In 1877 :

"To the cultivators (of the Burdwan Division) the year was one of remarkable prosperity. The full crops attended with high prices owing to scarcity in Madras enabled them to pay off most of their debts and to satisfy the demands of the landlords" (Calcutta Gazette, November 28th, 1877).

"A marked amelioration in the material condition of the people is to be observed in most of the districts of Bengal. The only fear now is that the improved condition of the peasantry (of Rajshayee Division) and their consequent independence may make them act unfairly towards their landlords" (Calcutta Gazette, September 19, 1877).

"There can be no doubt that the material condition of the agricultural portion of the population (of Dacca Division) is one of great and increasing prosperity and as a consequence of rapidly advancing independence" (Calcutta Gazette, September 26, 1877).

"The Magistrates of 24-Perganas, Nuddea and Jessore concur in testifying to a general improvement in the material condition of the lower classes" (Calcutta Gazette, September 19, 1877).

"One very good test of the condition of the lower classes lies in the rate of wages and both in Chittagong and Noakhally these are said to be very high" (Calcutta Gazette, October 3, 1877).

In 1878:

The material condition of the people (of Burdwan Division) was good. The outturn of the crop was fair (Calcutta Gazette, October 2, 1878).

"The year was to the cultivating classes (of the Dacca Division) who in Eastern Bengal form the bulk of the people, a season of extraordinary prosperity. They had good crops both of rice and jute and realised extremely high prices" (Calcutta Gazette, September 25, 1878).

"The year was one of progress and increased prosperity, especially in regard to the lower classes, whether ryots or artisans (of the Presidency Division)—(Calcutta Gazette, October 2, 1878).

The Agricultural classes of this division (viz., Rajshahyee division) are now extremely prosperous (Calcutta Gazette, September 25, 1878).

In 1879:

"There is unanimous testimony to the prosperity of the people (of the Burdwan Division), the result of good harvests, high prices, and a liberal demand for labour" (Calcutta Gazette, September 24, 1879).

"The high prices of food grains, which ruled during the year have in this division (Rajshahyee Division) as elsewhere in Bengal brought a large measure of prosperity to the labouring classes (Calcutta Gazette, September 24, 1879).

"The material condition of the people (of the Chittagong Division) is reported to be generally prosperous (Calcutta Gazette).

"There is, remarks the Commissioner of the Presidency Division, a general consensus of opinion that the condition of the agricultural classes who form the majority of the population has so much improved within the present generation that the trading classes have shared in the progress; that labouring classes are also better off than their ancestors (Calcutta Gazette, August 13, 1879).

In 1880:

"With the exception of two or three districts in which only an average rice crop was obtained, the principal harvests of the year were exceptionally good and the result was a great fall in the prices of food grains throughout the province. In most of the districts of Eastern Bengal the crops were the best that have been obtained for many years past. In nearly every division there were districts which yielded bumper crops (Administration Report of Bengal for 1880-81).

In 1881:

"The harvests of the year, though deficient in some tracts, gave a good outturn for the entire province, the addition of which to the large stocks already accumulated from the excellence of crops of the previous year, caused a further decline in the price of grain and a further improvement in the general condition of the people" (Administration Report of Bengal for 1881-82).

Sir Ashley Eden in a speech at Dacca, 1877 described the condition of the peasantry of Bengal in the following way :

"Great as was the progress which I knew had been made in the position of the cultivating classes, I was quite unprepared to find them occupying a position so different from that which I remember them to occupy when I first came to the country. They were then poor and oppressed, with little incentive to increase productive powers of the soil. I find them now as prosperous, as independent and as comfortable as the peasantry I believe of any country in the world; well-fed, well-clothed, free to enjoy the full benefit of their labour, and to hold their own or obtain prompt redress for any wrong."

The commendable conduct of the zemindars is borne out by the official reports :

In 1873:

Among the native Zemindars who have been distinguished for active benevolence and liberality, the Commissioner (Burdwan division) notices Baboo Jaykissen Mookerjee in Hooghly, Baboo Nobin Chunder Nag in Midnapore, Baboo Radhabullub Sing of Kunchiakole, Baboo Damodar Sing of Maliara in Bancoorah, and Baboo Ram Ranjan Chuckerbutty of Hetampore in Birbhoom. The Maharaja of Burdwan has, with his accustomed liberality, made a further donation of Rs. 10,000 during the year as an addition to his former subscription of Rs. 50,000 in aid of the dispensaries for the suppression of the epidemic fever (Calcutta Gazette, 5th November).

His Honor recognises the favourable testimony borne by the Commissioner (of Chittagong Division) to Baboo Kantapersad Hazaree and Abdool Maloom of Chittagong

and Baboo Annodapersad Roy of Tipperah, for their liberality and public spirit.

The Moharani Surnamoyi of Kasimbazar has extended her munificence to this division. The Lieutenant-Governor has frequently acknowledged her generous liberality, and is glad to do so again in this place (Calcutta Gazette, 3rd September).

In 1874:

The Lieutenant-Governor has read with satisfaction the testimony borne by the Collector of Mymensingh to the kindness and consideration which the district Zemindars, as a body, have shewn in forbearing to press their ryots for rent during this year of difficulty. The Collectors of Dacca and Fureedpore have recorded similar remarks. These circumstances reflect credit on the Zemindars as a body, and are duly appreciated by Government (Calcutta Gazette, 25th November).

The Lieutenant-Governor notices also as satisfactory that the year under review was unmarked by disturbance in the relations between landlord and tenant (of Chittagong Division), (Calcutta Gazette, 18th November).

In 1875:

The Lieutenant-Governor is glad to see the favourable account that Mr. Buckland has been able to give of the conduct of the Zemindars in the Burdwan Division. No Zemindar of importance has come under the unfavourable notice of Government. On the other hand, many Zemindars remarkably distinguished themselves during the late scarcity for munificence and charity. The Lieutenant-Governor has already acknowledged their liberality. The Maharaja of Burdwan, as usual, comes first in works of benevolence and

public spirit. The title of Rajah has recently been conferred on Ram Runjun Chuckerbutty of Hetampore, on Bissessur Malia of Raneegunge, and the title of Ranees on Horo Sundari Debya of the same place, in recognition of their good services and munificence during the past year (Calcutta Gazette, 18th August).

Lord Ulick Browne reports also favourably of the conduct of the Zemindars in the Presidency Division. Many Zemindars behaved towards their ryots with forbearance, and many with liberality, during the scarcity. The Commissioner prominently brings to the notice of Government the names of Rajah Komul Krishna and Rajah Narendra Krishna and the heirs of Sir Rajah Radhakant Deb, in the 24-Perganas; of Mr. Sibbald, Baboo Surendranath Pal Choudhuri, Baboo Bamondas Mookerjee, Baboo Nuffer Chundra Pal Choudhuri and Molla Khodadad Khan in Nuddea (Calcutta Gazette, 1st September).

The conduct of Zemindars (of Dacca Division) is noticed as having been generally worthy of their wealth and position. Several of the Dacca Zemindars distinguished themselves by liberality during the scarcity, conspicuous among whom were Nawab Abdool Gunny, C.S.I., his son Khajah Ashanoola, Khan Bahadur, Ray Kali Narayan Choudhuri of Bhowal, and the Coondu family of Bhaggacul. Among Mymensingh Zemindars, Baboo Kasi Kissore Roy of Ram Gopalpore is noticed for his considerate and liberal conduct in remitting three months' rent, and postponing the demand of three months more, to the inhabitants of 12 villages on his estate, whose houses were destroyed by the whirlwind of 19th March (Calcutta Gazette, 1st September).

The leading Zemindars of the (Rajshahyee) division did their duty most creditably in alleviating the distress occasioned by the failure of the harvests, and the Lieutenant-

Governor has already acknowledged the good services thus rendered (Calcutta Gazette, 6th October).

In 1876:

In Dinajpore the resident Zemindars are described as being inclined to assist education, and from Rungpore the report is favourable. The munificence of Rajah Promotho-nath Roy, of Dighapathia in Rajshahyee, in offering the large sum of one lac and a half of rupees for the proposed Rajshahyee College, has been suitably acknowledged by Government (Calcutta Gazette, 30th August).

The names of Nawab Abdool Gunnee, C.S.I., of his son Khajah Ashanoolla, Khan Bahadur, and of Rajah Kali Narayan Roy Chowdhuri, all of Dacca, are conspicuous as usual for their liberality and good behaviour as landlords. Among other names mentioned are Baboo Soorjakant Acharjee, Srimattee Bissessuree Debya, and Sadut Ali Khan of Mymensing, Moonshee Golam Ally Chowdhury, Baboo Mohini Mohan Dass, and Baboo Shyama Sankar Mojumdar of Fureedpore, and Baboo Annoda Prosad Roy of Sarail, in the Tipperah District (Calcutta Gazette, 20th September).

The Lieutenant-Governor observes with pleasure that amicable arrangements exist between landlords and tenants in the Bankoorah district, and that Baboo Radhabullub Sing Deo, Damodar Sing, and the Banerjees of Ajudhya, are specially commended among the resident landlords of the district for their liberality. The Maharanee of Burdwan and Raja Jotindra Mohan Tagore are highly spoken of by the Collector of Midnapore as animated by a genuine desire to do their duty to their tenantry and spend money on drainage and improvements (Calcutta Gazette, 18th October).

In 1877

The relations between landlord and tenant are described as amicable, except in the district of Midnapore, where the

pressure of rent question has made itself generally felt. The Maharanee of Burdwan is mentioned with special commendation as the best proprietor in Midnapore, she has prohibited, for instance, the levy of abwabs of every kind in the Soojamoota estate belonging to her. In Bankoora, Baboo Radhabullab Sing of Kuchiakole, Baboo Damodar Sing of Maliarah, the Banerjees of Ajudhya, and the Messrs. Gishorne are well spoken of. In Birbhoom, Rajah Ramranjan Chakravarti of Hetampur is specially mentioned (Calcutta Gazette, 28th November).

The conduct of the zemindars (Rajshahyee Division) has, with one or two exceptions, been good. In Rajshahyee, Baboo Kristendro Rai of Bolohar, is specially mentioned by the Collector as a liberal minded gentleman. The zemindars of Rampore, especially Baboo Nabin Chander Roy of Bancondanga, showed great liberality in connection with the celebrating of the 1st of January. In Pubna the Tagore family were, as heretofore, foremost in good works (Calcutta Gazette, 19th September)

In Mymensingh, Srimati Biseshwari Debya, Huro Durga Chowdhoorani, and Babu Kasi Kissore Roy, have distinguished themselves by liberality to a medical charity. In Tipperah honourable mention is made of Roy Annoda Prosad Roy Bahadur of Cossimbazar, of Nawab Ashan-Ulla, Baboo Ishan Chandra Roy, and Baboo Ram Dullal Roy (Calcutta Gazette 26th September).

The conduct of the Zemindars (in Presidency Division) has been with few exceptions worthy of praise. There were no serious quarrels with tenants in any district. In Nuddea the zemindars have shown great interest in education and in the future of the Krishnagur College. Mr. Stevens names Baboo Bamon Das Mookerjee of Debagram, Babu Jagat Chunder Mookherjee of Muragatcha, Molla Khodadad Khan,

Baboo Prosunna Chunder Roy of Kurulgatchi, Baboo Hira Lal Shaha of Amla, Baboo Srinath Chowdhurie, and Munshi Amir Biswas, as practically active in educational matters. Messrs. Sibbald, P. Smith, A. Hills, Macnaughten, Jones and Sherrieff, are specially noticed as good landlords.

In Moorshidabad, Rao Rajendra Narayan Rai of Lalgola is distinguished for charity to the poor and kindness to his tenantry, while the name of Maharani Surnomoyi stands foremost in Bengal for works of charity in the Presidency Division (Calcutta Gazette, 19th September).

There are so many good Zemindars in the Presidency Division, that it would be almost invidious to select any for special favourable mention. Those who are badly spoken of are few and far between (Calcutta Gazette, 2nd October).

In 1878

The Dacca District has suffered a loss in the death of Rajah Kali Narain Roy, who both in public and private life was a man deserving of the highest praise. To Newab Abdool Gunny and Asanoolah the town of Dacca owes a debt of gratitude. In Mymensing the Alapsing Zemindars, Raja Surjakant Acharjea, and several others are specially mentioned, and generally the Zemindars in the district are said to have lived on good terms with their tenantry and one another during the past year (Calcutta Gazette, 25th September).

There is but little to notice especially under this head where there are so many public spirited landowners as there are in the Burdwan Division, it would be invidious to name any, unless, indeed it be His Highness the Maharajah of Burdwan, who is always foremost in assisting Government and setting a good example to the whole province. None

of the Zemindars gave any especial trouble during the year, and they were all, as a rule, on tolerable terms with their tenants (Burdwan Division,) (Calcutta Gazette, 2nd October).

The conduct of the Zemindars has been good in every district (Rajshahyee) save Pubna. In Rungpore, Baboo Nobin Chandra Rai Chowdhury and Baboo Gobinda Lal Rai have both made handsome grants of land towards the improvement of the drainage of the town. Other Zemindars have also subscribed liberally for this work. Baboo Nobin Chandra Rai Chowdhuri has also made a liberal grant of Rs. 20,000 towards the construction of an iron bridge over the Alikuri river. Mr. Taylor's description of the feuds and enmities of the Zemindars of Pubna is a melancholy, though it is to be feared a true picture. Baboo Sarada Prosad Gangooly, Trustee of the Dwarkanath Tagore estates, receives favourable mention in this district (Calcutta Gazette, 25th September).

Regarding Burdwan division, as a body, they are men of enlightenment and public spirit, and the absence of agrarian differences testifies to the good understanding which exists between them and their tenantry (Calcutta Gazette, 24th September).

The conduct of the Zemindars during the year was generally satisfactory in Rajshahyee division (Calcutta Gazette, 24th September).

There is very little to be said on this subject, except in one small estate in Burdwan, there are no very bitter disagreements between landlords and tenants. A large number of Zemindars have been specially noticed for public spirit and good conduct by the various district officers, and specially by the sub-divisional officer of Serampur. This list is too long to be reproduced here ; it is gratifying to note

that public spirit and benevolence are becoming so common in the more advanced districts (Burdwan Division,) (Calcutta Gazette, 11th October).

With the exception of some riot cases in the district of Fureedpore, in which certain zemindari servants with or without the knowledge of their masters were implicated no cause of complaint has arisen against any of the landholders of the division. Nawab Ashanoolah, Kumar Rajendra Narayan Roy, Baboo Kalikristo Tagore, Raja Surjakunt Acharjya Chowdhury, and Baboos Jogendra Chundra and Amrita Narayan Chowdhuri of Muktagacha, Baboo Kali Kisore Roy, Baboo Hem Chundra Chowdhuri and Srimati Bisessuri Chaudhurani, are specially commended for their liberality and the good management of their estates (Dacca Division, Calcutta Gazette, 25th October).

On the whole, however, the conduct of the Zemindars has been good, there having been only in one large estate in Rungpur any serious difficulties of an agrarian character. Roy Rhada Govind, Roy Shahib and Baboo Budhinath Chowdhry, are mentioned with approbation by the Collector of Dinajpore. (Rajshahyee Division, Calcutta Gazette, 18th October).

The well-known minute of Sir Richard Temple, Lieutenant-Governor of Bengal, on the services rendered by the Zemindars during the Famine of 1874 would be interesting in illustration of the contention that the Zemindars deserved better treatment from the the Government than the one accorded to them by the Bengal Tenancy Act. It stated:—

“In most cases it is probable, and in many cases it is certain, throughout the distressed districts, that the Zemindars and landholders of all classes have suspended the collection of a considerable portion of their rents. In other

words, most of them have had their income seriously curtailed for a year or more. Many of them must have previously been living up to their incomes; and this should not excite any surprise, as they have families and numerous persons dependent on them. Their position in native society is such as to entail many expenses, such as are unavoidable in the joint family system, but are not at once obvious to Europeans who may have a more restricted standard of the family unit. All these circumstances must be considerably remembered when a general estimate is formed of their services in the cause of humanity. They must all have suffered at least temporary pecuniary loss, and some must have undergone grave inconvenience. Large numbers, perhaps many thousands of lesser landholders, who cannot be formally designated as distressed, must nevertheless have suffered a severe distress, the full degree of which will never be exactly known. It will be found, too, that for the period of the famine and scarcity, the land revenue is paid in by the Zemindars in a manner which is satisfactory and creditable to the working of the Permanent Settlement.

In most cases the Zemindars have refrained from asking for payment of the compensation money to which they would be by law entitled on account of the land taken up for relief roads. The value of these gifts cannot be precisely stated, but it must be very considerable. The relief roads extended over a length of about 6,000 miles. Of this length, a large portion must have been carried over land belonging to private landlords, most of whom have abstained from demanding compensation. This circumstance redounds to the honour and public spirit of those concerned.

Further it is hardly possible to include in this record the names of petty landholders, village notables, head

cultivators, jeyot-ryots, munduls, and others who have given their time, their knowledge and influence, their unpaid exertions and labours, to the service of relief. These meritorious persons are scattered all over the lately distressed districts. They cannot be particularised name by name, as such a catalogue would include so many hundreds—even some thousands; but their merit and worth have been great in the aggregate and should be duly remembered.

As a general fact, I may mention that the total of the sums taken out by Zemindars, landholders, and merchants both European and Native—chiefly by Natives—as advances from the public treasury, amounts to forty lakhs of rupees, or £460,000; partly for improvement of the land, partly for the benefit of the tenantry, partly for importation of grain. The advances will doubtless be punctually repaid. They were taken by the recipients not at all for their own benefit, but for the sake of doing good offices to those with whom they were connected by ties of fellowship, of neighbourhood, or of social relation. The magnitude of the sum total represents a great effort made by the upper classes of society on this occasion.

The subscriptions handed over by the people of Bengal to the Relief Committees, central and local, amount to nearly one hundred thousand pounds sterling. This large subscription has been given in great part by the landholders over and above other expenditure they may have incurred, or losses they may have suffered, in connection with the scarcity."

Mr. Robinson, Relief Commissioner of Dinajpore during the Famine of 1874, wrote:—"It is impossible to quit the subject of the conduct of Zemindars without reference to the subject of Government revenue ; and in a pecuniary point

of view, I suspect strongly that the Zemindars of all classes have probably been the heaviest sufferers by the failure of last year's crops. Very many of them have of themselves suspended all rent collections till better times come for their ryots ; and others who would have collected, have been unable to do so, partly from the sheer inability of the people to pay, and partly, I think, from the fear of consequences if complaints were heard of their pressing harshly on their ryots. But be this as it may, there can be no doubt that by far the greater part of those who have paid their Government revenue during the past year have had to borrow the money to do so, and this alone must have been no slight strain on the resources of some of them."

Sir Richard Temple's Minute also testified to the creditable conduct of some of the individual Zemindars during the famine : *The Maharaja of Burdwan*—This native nobleman's charity has always been far-reaching and his liberality has been repeatedly acknowledged by the Government and by his countrymen. During 1874 the Maharaja (though needing a change of climate by reason of indifferent health) staid the whole year in Burdwan in order to encourage his people by his presence, and busied himself actively in the work of relieving distress. He opened relief-houses in different parts of the Burdwan district, and at one time he was relieving 4,000 persons daily. He is believed to have expended on relief works and charitable relief more than £20,000 ; and the Commissioner reports that his "charities were limited only by the demand made on them." I consider that he has on this occasion set a noble example, befitting his position as landlord of the largest Zemindaree in Bengal.

Ranee Surnomai of Cossimbazar—This lady owns estates in Murshidabad, Dinajpore, Rajshahi, Rungpore, Pubna, and Nādia. Her munificent subscriptions towards schools, hospitals, and other public improvements have on many

occasions been acknowledged by Government. This year she helped her tenants and aided the Government relief officers in every possible way. She imported grain and distributed it in her villages, remitted or suspended the rent of distressed ryots, and made herself responsible for the repayment of Government advances. By her beneficent conduct on this occasion she has continued to merit the commendation bestowed by my predecessor, who mentioned her as being among the best Zemindars in Bengal.

Mussumat Sham Mohinee of Dinajpore—This lady (locally called Maharanee) owns large estates (with a rental of £40,000) in the distressed portions of the Dinajpore district. She refrained from collecting rents during the year of scarcity. She bought and distributed to her tenants about £5,000 worth of rice and seed-grain; caused tanks to be dug on her estate; gave land free of charge to her villagers for their tanks; maintained a relief-house where, from first to last, about 90,000 persons received relief; and made herself responsible for the repayment of all advances of grain made by Government to her ryots.

Baboo Bissessur Melay, in behalf of his mother-in-law Darumba Debya, of Searsole in the Burdwan district, showed distinguished liberality. He executed relief works for the convenience of his villages at a cost of about £10,000, distributed charitable relief daily at a poor-house near his home, and was personally active in directing the due administration of his own charities and of the Government relief operations.

Baboo Ram Runjun Chuckerbutty, of Birbhum, owns estates which were visited by distress. He from the first set a good example to the neighbourhood, expended £1,400 on relief-works, remitted £3,100 (or one-tenth of his yearly rents), maintained for four months a relief-house where 250 persons were fed daily, subscribed largely to relief funds,

and personally, as well as through his efficient manager, Mr. Reed, superintended the dispensation of his charities.

Babus Joykissen Mukherjee and Rajkissen Banerjee, hold large estates in a part of Hooghly which was much distressed. They undertook a considerable number of relief-works, they helped their ryots, and remitted or suspended rents. They both personally busied themselves in directing relief operations. The Commissioner writes that, "in the Hooghly District, Babu Joykissen Mukherjee was, as usual the first and foremost in his exertions for the good of the people, and in support of the officers of Government."

Rajah Jotindra Mohun Tagore owns large estates in the Midnapore district. Although the distress there, which at first threatened to be severe, became afterwards reduced to smaller proportions, he granted to his ryots remissions of rent to the amount of £4,000, distributed seed-grain and money, gave £200 and some land for relief-works, opened a dispensary at his own cost, and contributed towards medical relief generally. He set an excellent example in these respects at the very commencement of the distress, when the effect of such an example in the country was likely to be particularly good.

Rajah Promothanath Roy, of Dighapatia, owns extensive estates in Bogra and Rajshahi districts. He was conspicuous above all other Zemindars of Bogra for his liberality. He executed considerable relief-works at his own cost, maintained four relief-houses, at which about 1,400 people were fed daily, advanced money and seed-grain largely to his ryots, and abstained from pressing them for rent. He set an excellent example to the landholders of the Rajshahi, Pubna and Bogra districts.

Babu Radha Gobind Roy Saheb, of Dinajpore, maintained a private poor-house, where gratuitous relief was

given, abstained from realizing his rents, and aided Government relief officers whenever, and in whatever way he was asked. The Commissioner reports that this gentleman did his duty as Zemindar in a quiet, but thoroughly satisfactory manner. *Babu Shetab Chand Lahoree, Resident of Murshidabad, but Zemindar in Dinajpore*, deputed a special agent to superintend relief measures on his estates, executed several relief works, advanced grain to his ryots, maintained a charitable relief-house at his own expense throughout, and abstained from pressing for rent.

Babu Shama Sunker Roy, of Teota, usually resides in another district, but on hearing of the distress, went to live on his estates in Dinajpore. He imported grain for his people, opened relief-works, maintained two relief-houses throughout the famine, made large advances to his ryots for food and materially assisted the relief officers of Government. *Babu Romonce Mohun Roy, Chowdhree, of Rungpore*, has previously been known to be a man of liberality. During 1874 he maintained a relief-house on his estates, imported grain, and sold it at cheap rates to his ryots, whose rents he abstained from collecting.

Khajeh Ahsanoollah, of Dacca, son of *Khajeh Abdool Ghunee, C. S. I.*, well-known for his active liberality upon this as well as other occasions, though residing in a district in which scarcity was happily not general, contributed liberally to the relief of the distressed poor in the city of Dacca, and rendered valuable assistance to the transport operations in the Rajshahi Division, by placing his private steamer at the disposal of Government.

The Zemindars mentioned below carried on relief works or maintained relief-houses at their own expense, or imported grain for the help of the ryots or advanced

money and grain to their ryots or actively and diligently managed the administration of Government relief :

Dinajpore

Radha Gobind Roy, Saheb; Narayan Chunder Chowdhree of Chooramun; Boodheenath Chowdhree of Maldoar; Proteema Soondaree Chowdhranee of Jagadal; Pearee Mohan Chowdhree of Jagadal; Annada Coomar Chowdhree of Jagadal; Baboo Shama Nath Roy of Muhadebpore; Shama Soondaree Debea of Lallgola; Janokee Geer Gossamee of Roygunge; Baboo Sisandayal Roy of Huldebaree; Baboo Kureem Baksh Sircar; Koilaseshoree Debea; Babu Modho Soodun Bannerjee; Mussumat Greeja Munnee Debea; Bajra Mondal, Ryot, Dinagepore; Baboo Muatahar Roy, Agent of Luchmeeput Rai Bahadur, Dinajpur; Tareenee Persad Chowdhree of Takoorgaon, Dinajpur; Estate of the late Prosonno Coomar Tagore, Trustees; Ram Mahamed, Ijaradar.

Bogra

Baboo Ooma Churn Chowdhree of Jamalpore; Baboo Koonja Beharee Roy of Dumduma; Mohima Ranjan Chowdhree of Kakina; Haneef Talookdar of Mahobala; Baboo Eda Paramanik of Badladighee ; Ram Chunder Geer Gossamee of Sherpore ; Radha Rumun, Munshee of Sherpore.

Maldah

Baboo Vojoho Mohon Roy of Harishchundrapore.

Rungpore

Baboo Dukhina Mohun Chowdhree of Tepa; Baboo Nobin Chundro Roy Chowdhree of Bamandanga; Baboo Mohima Runjun Roy of Kakina; Baboo Kinoo Sing Roy; Baboo Anand Persad Roy of Sanibarya; Baboo Shib Chundro Lahiree of Bowchandee; Baboo Janokee Bullub Sen of Dimlah.

Rajshahi

Baboo Shekhareswar Roy of Tahirpore; Baboo Gopalendra Narayn Roy of Pooteah; Baboo Roy Grish Chunder Lahiree Bahadur ; Baboo Kishoree Nath Chowdhree ; Ranee Shiveswaree of Nattore, Raja Chundra Nath Bahadur of Nattore ; Moulvie Mahamed Rasheed Khan Chowdhree ; Baboo Tara Nath Chowdhree; Baboo Raj Kumar Sirkar; Baboo Saroda Persad Sookul; Baboo Kristo Lall Moitra, Agent to Baboo Debendra Nath Tagore; Baboo Mohinee Mohun Roy; Baboo Hara Nath Chowdhree ; Baboo Kristendra Roy ; Baul Mondal.

Pabna

Baboo Jadunath Mookerjee, Agent of the Tagore Estate; Mussamut Rai Lukhee Debya of Sagoona, near Taras; Baboo Bunwaree Lall Roy; Sadut Ali Khan of Kutunga; Mussamut Brojo Soondaree Chowdhranee; Dilawar Ali Moonshee.

Murshidabad

Baboo Annoda Persad Roy of Cossimbazar; Rao Jogendra Narain Roy of Lallgola; Moonshee Zeelool Rahman of Talibpore.

Bankura

Baboo Damoodur Sing, Zemindar.

24-Pergannas

Koomar Komul Krishna Bahadur ; Kumar Narendra Krishna; Mr. Cowasjee Eduljee of the Port Canning Company; Baboo Degumber Mitter; Baboo Mohesh Chunder Chowdhree.

Nadia

Baboo Baman Dass Mookerjee of Debagram ; Baboo Jugut Chunder Mookerjee of Muragachia; Moollah Khudadad Khan of Bamunpokree.

It was an act of sheer ingratitude that the Government conveniently forgot the services of Zemindars and consulted their own interests in the passing of the Bengal Tenancy Act of 1885.

The Tenancy Act of 1885 was further amended in 1928. The Bengal Legislative Council by a resolution passed on the 7th July, 1921, recommended the appointment of a Committee to consider and report what amendments were needed in the Bengal Tenancy Act. The Committee were appointed in August, 1921 and they presented their report, together with a preliminary draft of a Bill to amend the Act on the 19th December, 1922. A Bill was introduced in the Council by Government on the 3rd December, 1925. The Select Committee consisted of 18 members and as many as 13 members signed notes of dissent. Government did not accept the Bill as revised by the Select Committee and they referred the matter to an informal Sub-Committee in which Sir Nalini Ranjan Chatterjee was invited to act. The Sub-Committee drafted a Bill which with slight modification was passed by the Council on 14th December 1928. The Hon'ble Sir P. C. Mitter, Revenue Member to the Government of Bengal, was in charge of the Bill in the Council.

In tracing the history of tenancy legislation, we find three landmarks: the Rent Act of 1859, the Tenancy Act of 1885 and the Amending Act of 1928. The following were the main lines of the Rent Act of 1859* :—

- I. The abolition of the zemindars' power of compelling the attendance of their ryots.
- II. A small class of tenants to be entitled to hold at fixed rates of rent.

* Mr. Field's *Landholding and the Relation of Landlord and Tenant*, 2nd Ed. P. 748.

- III. A Right of Occupancy, entitling the ryot to hold his land as long as he pays his rent, to be acquired by twelve years' continuous cultivation or holding.
- IV. Provision for settling rent or enhanced rent by the agency of the Revenue Courts.
- V. A reformed attempt to bring about the interchange of pattas and kabuliyats between landlords and tenants.
- VI. An attempt to compel the delivery of receipts for rent, and prevent exaction of excess rent.
- VII. The amendment of the Law of Distraint.
- VIII. The transfer of original jurisdiction in suits between Landlords and Tenants from the Civil to the Revenue Courts. The Chief Civil Court of the district retained a limited appellate jurisdiction.
- IX. Provision for the registration of transfers of permanent transferable interests in land intermediate between the Zemindar and the cultivator.

The following were the main changes in the Tenancy Act of 1885 :—

(1) The provisions which existed in the previous law as to ryots being entitled to pattahs and the landlords being entitled to kabuliyats and the procedure for enforcing the said rights were omitted.

(2) The provisions relating to distraint which the Rent Law Commission proposed to abolish altogether on the ground that there was evidence of positive abuse of the said provisions, though not omitted were considerably

modified, appropriate safeguards being provided for the protection of the ryots.

(3) Definitions were given of the various terms used in connection with the law of landlord and tenant; for instance "estate" "proprietor", "tenure", "under-tenure", "ryot" under-ryot, "holding" &c.

(4) Custom and Customary rights were saved, it being provided that nothing in the Act shall affect any custom or customary right not inconsistent with, nor expressly or by necessary implications modified or abolished by its provisions.

(5) The tenants were divided into three classes (1) tenure-holders including under-tenure-holders, (2) ryots and (3) under-ryots; and the ryots again were subdivided into three classes, viz., (a) ryots holding at fixed rates, (b) occupancy ryots and (c) non-occupancy ryots. A sharp distinction was drawn between the different classes and tests were laid down for determining whether certain classes of agriculturists were tenure-holders or ryots.

(6) The incidents of the different kinds of tenancies and the rights and liabilities of the different classes of tenants were specified.

(7) No tenant is to be ejected except in execution of a decree.

(8) All notices of enhancement have been abolished.

(9) Grounds of enhancement of rent have been specifically noted.

(10) Provision has been made empowering the Local Government to order survey and preparation of record-of-rights.

(11) Special periods of limitation have been prescribed in suits between landlord and tenant and the disabilities of minority and lunacy do not apply to such suits.

The following are some of the principal changes in the Tenancy Amendment Act of 1928 :—

S. 3 (17): Definition of "Tenant":—Persons who cultivate the land of another person on condition of delivering a share (e.g. half) of whatever may be the actual produce in the year are not 'tenants'. This class covers persons known as "bargadars" "adhiars" and "bhagdars". They will not be tenants unless expressly admitted by the landlord or held by a Civil Court to be tenants. This new provision will apply with retrospective effect even to those cultivators of this class who have been recorded in a record-of-rights as ryots or under-ryots.

Persons who cultivate the land of another person on condition of delivering a fixed quantity of produce, irrespective of the actual produce (e.g. 4 maunds of paddy every year) are, however, "tenants" and will be "ryots" or "under-ryots", as the case may be under the Act.

S. 18 :—Incidents of ryots at fixed rates. New subsection (1) (c) makes it clear that ryots at fixed rates will be settled and occupancy ryots if they comply with the conditions of S. 20. It is also made clear that these ryots will be liable to ejectment on breach of conditions in their leases, consistent with the provisions of this Act, but unlike ordinary occupancy ryots [S. 25(2)] they are not liable to ejectment merely for using the land in a manner not contemplated in the original purposes of their settlement.

The interest of a ryot at fixed rent is also protected interest [s. 160 (ff)].

S. 18C:—Lapsed landlord's fees. Lapsed landlord's fees will now be credited to District Boards.

S. 22. Merger:—When a co-sharer landlord purchases an occupancy holding of a ryot under him, the occupancy right will not merge, but the purchaser will hold on as occupancy ryots under the 16 annas landlords. When, however, the purchase is made in a sale in execution of a rent-decree the occupancy right will merge.

Ss. 23A. Rights in trees:—Full right is given to occupancy ryots in respect of all kinds of trees.

Ss. 26A to 26J, 48H:—Occupancy holdings are made transferable subject to payment of certain *salami* or transfer fees to the landlord at the time of registration of deed or purchase in Court and also to landlord's right of pre-emption with 10% compensation.

Usufructuary mortgage by an occupancy ryot cannot exceed 15 years.

Sub-leases to under-ryots for a term exceeding 12 years are made liable to payment of a *salami* (S. 48H).

S. 38. Reduction of rent may be had if the landlord has refused or neglected to carry out the arrangements regarding irrigation of embankment [s. 38 (c)].

Ss. 40, 40A:—Provisions about commutation of produce rent have been deleted.

Ss. 48, 48A to 48G, and 49: Under-ryots:—Under-ryots who have by reason of custom acquired occupancy rights under the existing law, will continue to enjoy such rights [s. 48G (1)]; and the incidents of such rights have been clearly defined, namely, that these under-ryots will

have, as against their immediate landlords, all the rights of occupancy ryots except the new right of transferability, but they will not be protected interests under cl. (d) of s. 160 [s. 48G (3)].

The remaining under-ryots have been divided into two classes:—(1) those who have held their land for 12 years or more or have a homestead thereon, also those who have been admitted in a document by their landlord to have a permanent and heritable right; and (2) all others. Both classes will be liable to ejectment on the ground on which an occupancy ryot is liable to ejectment, and also on one additional ground viz., arrears of rent. The second class can also be ejected on the ground that their lease has expired or on 1 year's notice. This, however, can only be done if the landlord requires the land for his own cultivation (s. 48C). If within 4 years the landlord instead of cultivating it himself, sublets it, the under-ryot will be entitled to have the land restored to him.

The restriction on under-ryot's leases to 9 years has been removed.

The restriction on the initial rent of under-ryots has also been removed, but subsequent enhancements are limited to 4 as. in the rupee in case of contract, and to one-third of gross produce in case of enhancement by Court.

Usufructuary mortgage cannot, as in the case of ryots, exceed 15 years (s. 49).

All under-ryots have now the right to abandon their holdings under the same conditions and with the same safeguards as in the case of ryots (s. 87). They have got the right to deposit their landlord's rent and to prevent or set aside a sale by the Court for the latter's arrears (s. 171). The two superior classes of under-ryots have also got the

right to claim recognition when their immediate landlord abandons his holding, on payment of a *salami* [s. 87 (5)]. Similarly in case of surrender the under-ryot is protected under S. 86. No surrender will be valid unless made with the previous consent of the under-ryot. The provisions regarding surrender in S. 86 have been made applicable to under-ryots with occupancy rights (s. 48G). They have not, however, been extended to other under-ryots.

Ss. 54, 58, 64A:—Certain additional facilities have been provided for payment or tender of rent at the landlord's village office or by postal money order.

S. 76: Improvements:—Rights have been given to ryots to excavate tanks or build pakka houses. *Salami* for exercise of such rights is to be treated as *abwab*.

S. 88. Sub-division of a tenure or holding may be enforced by the tenant through Court, under certain conditions.

S. 93: Common Manager:—Tenants may, under certain circumstances, compel, through Court, appointment of Common Manager by their landlords.

S. 99A:—Common Agent may be appointed by co-sharer landlords for receiving landlord's fees and rent deposited in Court.

Ss. 121 to 142:—Provisions about Distraint have been deleted.

S. 145:—Procedure in rent-suits. Previous permission of the Court is not required for verification of pleadings by *naibs* and *gomostas*.

S. 146A-B:—Omission of Co-sharer Tenants will not affect Rent-Suits in certain circumstances.

S. 148(k):—A summary procedure of rent-suits by special summons is prescribed in cases in which the rent claimed is based on a record of rights or registered lease, or previous decree.

S. 184A:—Power is given to Co-sharer landlord to institute rent-suit in respect of his share of the rent.

S. 178(l) (i), s. 179:—Interest on rent cannot be recovered at a higher rate than that provided for in s. 67 notwithstanding any term in a contract executed before or after the passing of the B. T. Act even if the contract be in a permanent mokurari lease.

Khas Mahals

In Bengal, over and above the permanently settled estates, there are Khasmahals which are also estates, owned by Government. In respect of Khasmahals, the Government is a landlord like other landlords. "Waste lands not included within the area of any permanently settled estates, islands thrown up in large navigable rivers, resumed revenue-free lands and settled estates which have elapsed by sale for arrears or escheat are included within this definition".

The assessment of rent is made under Settlement Regulations. Road cess is payable by Government for the Khasmahals in the same way as by the owner of private estates. The Government dues in Khasmahals are generally realised by the certificate procedure laid down in the Public Demands Recovery Act. This is how the demand payable to the Collector is realised without resorting to a Civil Court. The Act gives the certificate-officer the power to file a certificate in his office stating the demand due. The certificate-debtor shall be served with a notice and a copy of the certificate and from the date of the service of notice,

it has the effect of an attachment on the properties belonging to the debtors. The certificate-debtor may within thirty days from the service of the notice or where the notice has not been duly served, then within thirty days from the execution of any process for enforcing the certificate, present to the certificate officer in whose office the certificate is filed or to the certificate officer who is executing the certificate, a petition denying his liability in whole or in part. The certificate officer in whose office the original certificate is filed shall hear the petition, take evidence (if necessary) and determine the case. The certificate-officer may order execution of a certificate by attachment and sale or by sale of any property or by attachment of any decree or by arresting the certificate debtor and detaining him in the civil prison by any two or all of the methods mentioned. No step in execution of a certificate shall be taken until the period of thirty days has elapsed since the date of the service of the notice or until the petition filed has been heard and determined. A civil court is under this Act entitled to interfere with a certificate officer's proceedings in execution only on the ground of fraud.

Sunderban Lots

The Sunderbans, situated in the Lower Gangetic Delta, cover an area of about 12,000 square miles. At the time of the Permanent Settlement, this tract was left undisturbed: it remained the property of the State. By Regulation III of 1829, the Governor-General in Council was empowered to make grants, assignments and leases thereof. The reclamation of the Sunderbans was a difficult affair: the whole tract was unfit for human habitation and necessarily for cultivation. The Sunderbans consisted of low-lying swampy forests, infested with tigers and other ferocious animals. Accordingly, the Grant Rule of 1830 provided that the entire grant was to be revenue free for twenty years, that

each grantee remained liable to render a fourth part of the settled area fit for cultivation in five years, that a fourth part of the said area was exempted from assessment in perpetuity in lieu of an allowance for houses, water-courses, tanks, roads, the space required for the erection of dams and embankments etc., that the remaining three-fourths of the area were to be assessed with revenue at the following rates, viz., 2 annas per bigha in the twenty-first year, four annas in the twenty-second year, six annas in the twenty-third year and eight annas in the twenty-fourth year, the last to remain fixed in perpetuity.

Under the Grant Rule of 1830, a large number of leases were contracted for. The grantees undertook the task of reclamation cheerfully but they could not meet with much success in spite of the fact that they sunk huge capital and encountered great many difficulties. In 1841, the grantees prayed for more liberal terms. In 1844, the Government extended the revenue-free period in individual cases to ten years. In 1852, the Presidency Commissioner found that the settlements had broken down and the revenue derived from the grants had been next to nothing. To accelerate the pace of reclamation, the Board of Revenue decided upon a reduction of the Government demand. The grantees whose opinions were invited by the Board proposed: first, free period of 20 years, then an assessment of 1 anna on half the area for ten years and thereafter the assessment of the whole area (excluding the irreclaimable portion) at 1 anna for ten years, $1\frac{1}{2}$ anna for the next ten years and afterwards at 2 annas the maximum rate in perpetuity.

In 1852, the Board of Revenue considering all the views proposed the following revision in terms: (1) grants should not be more than 10,000 bighas of 40 yards square and the rent-free period should be ten years, (2) one-fourth should be cleared in five years on pain of forfeiture, (3) one-

fourth should be exempted from assessment as before, (4) that the remainder should be assessed at half anna for ten years, then at one anna for five years, at two annas for the next five years, at three annas for five years more and thereafter at four annas the full rate and held that the old grants should be admitted to the benefit of the new rules proposed.

The Government after considering all the suggestions remarked in 1853 that the paramount object of Government in devising the rules was reclamation of the Sunderbans and the improvement of the revenue was of secondary and altogether subordinate importance. The Government further declared that speedy reclamation was the paramount object, Government being left free to impose a moderate assessment at some future time.

The Government accepted the terms offered by the grantees with two modifications, viz., (1) as regards progressive clearance, and (2) that the assessment of two annas instead of being in perpetuity, should be for ninety-nine years after which grants should be liable to reassessment on moderate terms, the proprietary right in the grants remaining unto the grantees, their successors and assigns for ever and option is given to the existing grantees to take the benefit of the said rules.

The Rules of 1853 did not prove sufficiently effective to promote new reclamation. In 1863, the Government sanctioned a new set of rules which provided for :

- (1) sale of unassessed lands at a minimum price of of Rs. 2-8-0 per acre free from any revenue demand whatsoever,
- (2) redemption of revenue of the existing grants by payment of a minimum sum of Rs. 2-8-0 per acre once for all.

In 1879, two sets of rules were issued, known respectively as the "Large Capitalist Rules" and the "Small Capitalist Rules" for lease of cultivation of waste lands. Under the Large Capitalist Rules of 1879, a provision was made, whereby the maximum Government demand on re-assessment was fixed at 70 p.c. of the assets, leaving 30 p.c. for the settlement-holder.

It was thus evident that Government in dealing with the Sunderbans thought of reclamation of lands: their object was not to realise high Government demand. The task of reclamation was at once difficult and costly. The grantees, assured by the Rules of 1830 and 1853 have fairly reclaimed the Sunderbans.

In understanding the difficulties of Sunderban proprietors, the following factors should receive appreciation: (a) the Sunderbans are surrounded by salt water rivers, having in most cases higher level than the agricultural lands inside the embankments, (b) cultivation has to depend on seasonal rains, (c) one crop is possible in the area, (d) it takes at least three years' washing with rain water to make lands fit for cultivation after they have once been flooded with salt water due to accidental break in the embankment, (e) every three years there is a failure of crop due to natural causes.

In the recent re-assessment of Sunderban lots, the Government have widely departed from the policy, pursued under the Rules of 1830 and 1853.

Patni Taluks

After the Permanent Settlement, various dependent taluks came into existence.. The Settlement enunciated a policy that prohibited the proprietors from disposing of any

dependent taluk to be held at the same or at any jama for a term exceeding ten years. This prohibition was repeated in 1795 and 1803. But in 1812, the policy was revised: proprietors were declared competent to grant leases to dependent talukdars on any terms convenient to the parties. In the year 1819, patni taluks¹ were created. The characteristics of these tenures are: "it is a taluk created by Zemindar to be held at a rent fixed in perpetuity by the lessee and his heirs for ever: the tenant is called upon to furnish collateral security for the rent, and for his conduct generally, or he is excused from this obligation at the Zemindar's discretion; but even if the original tenant be excused, still, in case of sales for arrears or other operations leading to the introduction of another tenant, such new incumbent has always in practice been liable to be so called upon at the option of the Zemindar. . . . In case of an arrear occurring, the tenure may be brought to sale by the Zemindar, and if the sale do not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand." The patni tenures are saleable in execution of ordinary money-decrees, and transferable by sale, gift or mortgage. The patni taluks are not liable to be cancelled for arrears of rent: they are saleable for arrears. The patnidars have the right to create similar subordinate tenures. The summary procedure for six-monthly sales for arrears of rent through the agency of the Collector of the District in which the patni taluk is situated is the chief peculiarity noticeable in the Patni Regulations.

A patni taluk cannot be created by the proprietor of a temporarily settled estate.

1. The estates of the Maharajadhiraj of Burdwan were saved by the creation of these patni-taluks and in fact these patni-taluks have their origin in the estates of the Maharajadhiraj.

A single patni taluk cannot cover the lands of more than one estate.

The patni system¹ is very popular in West Bengal and the Bengal Tenancy Act does not touch the Patni Regulations.

Intermediate Tenures.

Other intermediate tenures are: Maurusi (heritable), Mokurari (at fixed rent) and Maurusi Mokurrari (heritable and at fixed rent). There may be undertenures of these classes and the subinfeudation to an incredible degree exists in Bengal. All permanent tenures are transferable and hereditary under the Bengal Tenancy Act. Some of the intermediate tenures are briefly explained: Abadkari or Mandali tenures exist in Midnapore. The tenure was at its inception a lease for the reclamation of waste land. The Mandali right was heritable and transferable: the mandals gradually acquired the rights of middlemen.

Agat taluk is a recognised local tenure, prevalent in Tippera. The Agat talukdar is an offshoot of the talukdar and co-equal with him in responsibility to the proprietor to the extent of his share of the rents. The Agatdar is a person who has obtained in some way a portion of an undivided taluk.

The Aimas are tenures, created in Midnapore, which are granted for the purpose of clearing jungle or introducing

1. Under-tenures created by Patnidars are called dar-patni and those created by Dar-Patnidars are known as Sepatni tenures and these under-tenures are like the parent-tenures permanent, transferable, and heritable.

other improvements, free of rent or subject to small rents for the first few years and assessable subsequently at fixed or progressive rents. The Aimadars are tenure-holders within the meaning of the Bengal Tenancy Act.

Howlas exist in Bakerganj and East Bengal generally. In Bakerganj there are as many as thirteen persons having successive interests in the land inferior to that of the proprietor Zemindar. These interests are taluk, zimba taluk, shamilat taluk, osat taluk, nim osat taluk, howla, osat howla, nim osat howla, nim howla, osat nim howla, miras karsha, Kaim Karsha, Karshadar.

An Itman in Chittagong is ordinarily an under-tenure subordinate to a taluk. Undertenures in Chittagong bear a variety of names e.g., itman, dar-taluk, tappas, dar-tappas, muskasi. The undertenure carries with it the same rights as the taluk being transferable, heritable and held at fixed rates of rent in perpetuity.

Jote in East Bengal is a ryoti holding. In the district of Rangpur, the jotedar holds land immediately under the proprietor. He is generally a middleman, sometimes a cultivating ryot.

Istimari is a tenure granted in perpetuity. As a rule these two conditions are found combined and where the term is in perpetuity, the rent is fixed for ever. Under the Bengal Tenancy Act, all permanent tenures are transferable and heritable.

Noabad Talukdars (in Chittagong), as a rule, are permanent tenure-holders within the meaning of the Bengal Tenancy Act but are not entitled to hold at fixed rates of rent. The noabad talukdar has a transferable and heritable interest in the lands held by him.

The table of tenures and holdings in Bengal, as constructed by the Hon'ble Mr. Justice Field in "Landholding and the Relation of Landlord and Tenant in various countries" (1885) is given as follows :—

JAGIRDAR		ZEMINDAR		LAKHIRAJDAR		GHATWAL	
		(Paying revenue to Government)		(exempt from payment of revenue to Government)			
		Ejarahdar		(1) Altamga (2) Ayma (3) Madadmash			
		Darejarahdar or Ticcadar or Kat Kinadar					
		Raiyat					
Lakhirajdar (Exempt of rent)	Talukdar	Patnidar	Jangalbaridar	Ganthidar	Jotedar	Raiyat Sub-raiyat (1) Kurfar (2) Adhiyandar (3) Burgadar.	
	Zimba Talukdar	Darpatnidar					
(1) Brimutter	Ashat Talukdar	Sepatnidar					
(2) Pirutter	Nim-Ashat Talukdar	Chahar Patnidar					
	Howladar	Raiyat					
	Ashat Howladar						
	Nim-Ashat Howladar						
	Nim Howladar						
	Ashat Nim Howladar						
	Mirash Karsha						
	Kaim Karsha						
	Karshadar						

Economic Condition of Rent-receivers

There is a popular belief born of ignorance that the landlords of Bengal are rolling in wealth. The feeling of hostility that is found amongst the countrymen is traceable to such belief. But the fact is that the landlords of Bengal form the middle-classes of Bengal. Big Zemindars are few in number and those who are called landholders are Bengal's middle-classes having connection with the land. If all landlords were economically solvent, the flow of money dispersed to various rivulets of activities would have enriched the whole province. It is our misfortune that the landlords have no financial resources to revivify the alarming conditions of rural Bengal.

To get at the average income of the landholding unit, we are to find out the total rent-roll and the total number of estates.

Gross Rental of Bengal	Rs. 16,74,88,223
Collection charges at 10 per cent	Rs. 1,67,48,822
	<hr/>
	Rs. 15,07,39,401
Less Land Revenue	Rs. 3,07,91,739
	<hr/>
	Rs. 11,99,47,662

The huge figure of gross rental includes assessment on coal mines, tea plantations, and the rental intercepted by under-ryots and burgadars (about Rs. 3 crores) and Khas Mahals and accordingly in the above calculation allowances for these factors would be taken into consideration. Even taking rental at that figure, we find that after deducting the outgoings in the shape of land revenue, and collection charges the income intercepted by the landlords of Bengal is Rs. 11,99,47,662. Out of this income, a portion would go out in cesses and rates. It is very difficult to find out the

portion of cesses and rates contributed by landlords. If we take something like Rs. 75 thousand by way of contributions by the landlords towards cesses and rates, the income comes down to Rs. 11,24,47,662. Then there are losses in litigation and debts which may be modestly fixed at 10 per cent. Thus the net income stands at Rs. 10,12,03,896. The rental from Khasmahal estates is likely to be over Rs. 3 crores. There are 678 thousand landlords. Thus the net annual income per head comes to an insignificant figure, that is less than Rs. 17. If we deduct the rental intercepted by under-ryots and bargadars (Rs. 3 crores) the income comes down considerably. The total number of estates assessed to cesses is :

Rent-free lands	19,805
Rent-paying lands	5,613,723
	<hr/>
	5,633,528

Thus the total number of landholding units in Bengal is more than 56 lakhs. The average gross annual income of each unit is something like Rs. 28½ (56 lacs of units divided by the gross rental Rs. 16 crores). Moreover, each unit carries at least 3 co-sharers and in that case, the gross annual income per landlord becomes extremely meagre.

The comparative poverty of the Zemindars may be gauged from other sources. The total number of voters in the landholders' electorate returning a member to the Legislative Assembly is only about 740 in Bengal. The electoral qualifications in the landholders' constituency of the Legislative Assembly are the following: in the case of Burdwan Landholders' and the Presidency Landholders' constituencies, paid on his own account as a proprietor, land revenue amounting to not less than Rs. 6,000 or road and public works cesses amounting to not less than Rs. 1500 or in the case of the Dacca, the Rajshahi and the Chittagong

Landholders' constituencies paid, on his own account as a proprietor or a permanent tenure-holder land revenue amounting to not less than Rs. 4,000 or road and public works cesses amounting to not less than Rs. 1,000.

The following table, compiled from the Dacca Settlement Report, would give an idea of the economic strength of the landholders :—

	Number	Area in Sq. mile	Average area in acres	Average of total income of the land- lords per estate.
Land revenue less than Re. 1	939	10	7	14
Land revenue from Re. 1 to Rs. 5	4,076	93	15	30
Land revenue from Rs. 5 to Rs. 10	1,654	92	36	72
Land revenue from Rs. 10 to Rs. 50	2,671	400	96	192
Land revenue from Rs. 50 to Rs. 100	739	246	213	426
Land revenue from Rs. 100 to Rs. 500	501	424	542	1,080
Land revenue from Rs. 500 to Rs. 1000	90	180	1,277	2,554
Land revenue from Rs. 1000 to Rs. 10,000	108	759	4,497	8,994
Land revenue over Rs. 10,000	3	346	73,428	1,46,856

(Compiled from the Rajshahi Settlement Report)

21 Estates paying a revenue over Rs. 10,000					
128	„	„	„	„	Rs. 1,000 & below Rs. 10,000
102	„	„	„	„	Rs. 500 & below Rs. 1,000
1,246	„	„	„	„	Rs. 10, & below Rs. 500
137	„	„	„	„	Rs. 10 & less
11	Estates	have	an	area	over 20,000 acres
21	„	„	„	„	„ 10,000 & less than 20,000
188	„	„	„	„	„ 1,000 & less than 10,000
146	„	„	„	„	„ 500 & less than 1,000
1,167	„	„	„	„	„ 10 & less than 500
86	„	„	„	„	„ 10 acres and less.

The average debt of the landlord per capita is Rs. 600 in Bengal, Rs. 800 in Behar. The number of landlords in Bengal is 678 thousand. The total debt of landlords thus amounts to Rs. 40·68 crores. Of this 50 p. c. is secured by mortgage, that is Rs. 20·34 crores. Thus in any scheme of granting relief to landlords the need for debt conciliation is strongly felt.

The economic insolvency of the landholding community is borne out by other factors. The number of certificates filed under section 158A of the Bengal Tenancy Act during the year 1933-34 is 22,222. It shows that the tenancy law does not help the landlords in prompt and speedy realisation of rents. In the very same year, the number of permanently settled holdings advertised for sale was 62 ; the number of estates or shares of estates which actually became liable to sale was 14,471.

The economic deterioration of the landholding community is further accelerated by the fact that the tenancy law of the land has been a great handicap in the prompt realisation of rents.

Under the Permanent Settlement Regulations, the State has nothing to fear from the Zemindar : the Zemindar must pay or must see his land sold out under the sunset law. There can be no remission, no commiseration and no omission. The tenant is permitted by law to default. The period of limitation for arrears is 3 years from the last day of the year in which the arrear fell due. That means that the landlord is to pay revenue for 3 years without getting any rent at all. Interest accrues on arrear rent. To be fair, the tenant enjoys a more favourable position than the landlord in the matter of payment of their respective dues. When a tenant persists in making defaults, it is only after 3 years and 11 months that the landlord goes to Civil Court and,

thanks to the protracted nature of rent-suits in Civil Courts which ordinarily take more than a year, the landlord gets his decree in the sixth year. Even after getting the decree there is no knowing if he would be able to execute it successfully. During all these six years, the tenant is in enjoyment of the land while the landlord keeps on paying the revenue. Such a situation is the creation of the Bengal Tenancy Act.

Judicial statistics in Bengal show the position, as stated below :--

	Money suits.	Rent Suits.	Title and other suits.
1921	264,847	340,000	67,251
1925	216,339	331,169	64,846
1930	327,177	350,737	50,533

The Report on the working of the Wards, Attached and Trust Estates in Bengal in 1931-32 reveals the following interesting facts : the total amount of revenue and cess due from estates under Court of Wards Rs. 78,36,915 ; the rent and cess due to superior landlords Rs. 21, 09,302 ; out of Rs. 3,96,74,715, the total demand of rent and cess due to the estates, Rs. 1,39,59,157 or 35 p. c. was collected. The total sum spent during the year on schools, dispensaries, and works of improvement by the Wards Estates amounted to Rs. 5,00,412. The estates contributing the highest amounts are Burdwan (Rs. 1.49,772), Murshidabad (Rs. 76, 813), Kasimbazar (Rs. 70,534), Bhowal (Rs. 31,894), and Dacca Nawab Estate (Rs. 37,528).

The size of the property diminishes as time wears on because of the law of succession. In the absence of the law of primogeniture which is an ideal method for the conservation of vested interests, the properties dwindle at every stage of succession. It is also common knowledge that along with the dwindling of the property in size, the econo-

mic possibilities and capacities of the soil also diminish. A landlord having a lakh of Rupees as annual income may dwindle into insignificance in three generations—all the sons having equal rights in the property. The *Dayabhag* law of inheritance may be defended as a democratic institution but that contains seeds for the disintegration of landlordism. The Mohammedan law of succession is worse in so far as it splits up the property into innumerable divisions.

The impression that the landlords are rolling in wealth under the protecting wings of the Cornwallis Regulations stands torpedoed by hard statistics. The fact is that most of the landlords are heavily indebted.¹ The tenancy legislations have harshly dealt with the landlords as a class. The expensive and harassing methods of collecting rents through civil courts tell on the lean resources of the landlords. 54 per cent of the total number of civil suits instituted in Bengal are rent suits and 37 per cent are money suits and most of the money-suits are for kistibandi (bonds executed by the tenants for arrears of their rent). Arrears in rent have been acknowledged as inevitable features of land administration. Since the introduction of tenancy legislations, litigation has increased *ad nauseum* which is not to the advantage of the landlords, involving them in wastages for realising their legitimate dues. Strengthened by tenancy legislation,² dilatoriness of law, and sympathy of the civil

1. The economic insolvency of the landlords can be gauged from the fact that in times of depressions the number of defaults in land-revenue increases and the sale-law operates in many cases. Defaults and sales, as the report on the Administration of Bengal (1930-31) states, numbered 16,122 and 1,422 respectively as against 14,205 and 1,342 respectively in the year 1929-30.

2. In Bengal we have to sue in civil courts for arrears in land revenue—and not in revenue courts. In Bengal there is no revisional settlement and the rights are in individuals from the time of the Permanent Settlement. So it is perhaps right that civil courts

courts, the cultivating classes are not punctual in payment of their dues and arrears heap up causing unnecessary loss and harassment to the landlords and financial gain to the Government.

Under Section 158A of the Bengal Tenancy Act¹, the landlords may acquire the privilege of getting his arrear rents collected as public demands. This is the Certificate power whereby privileged landlords avail of the summary methods of the Public Demands Recovery Act. Under Section 99 of the Cess Act, cesses may be realised as public demands. These are privileges granted unto individual landlords for realisation of arrear rents and cesses. In view of continued economic depression prevailing in the country, the Hon'ble late Sir P. C. Mitter, Revenue Member to the Government of Bengal, extended some facilities to landlords by permitting default of one kist. In the Bengal Legislative Council, the Revenue Member declared in 1931 that a nominal penalty of 2 to 5 p.c. per mensem would be imposed on landlords in case of their failure to pay the March kist in time instead of imposing the maximum penalty of 25 p.c. The Hon'ble Sir B. L. Mitter declared in 1935 that the interest on arrears of land revenue would be 6 p.c. per annum.

To facilitate the realisation of moneys due under the decrees, the need for framing Garnishee rules in the province

should deal with these matters as important interests are affected. If we are to have suits in revenue court, valuable rights might be seriously affected. This point of view was urged before the Taxation Enquiry Committee by Sir P. C. Mitter.

1. Section 158A of the Bengal Tenancy Act: Any landlord (other than Govt.) whose land is situate in an area for which a record of rights has been prepared and finally published and in which such record is maintained may apply to the Local Government through the Collector of the district in which his land is situate for the application of the procedure provided by the Bengal Public Demands Recovery Act 1913 to the recovery of the arrears of rent which he alleges are, or may accrue, due to him for lands in such area.

is strongly felt. The Court may, under Garnishee orders, in the case of any debt due to the Judgment debtor (other than a debt secured by a mortgage or a charge or a negotiable instrument or a debt recoverable by or only in a revenue court) or any moveable property not in the possession of the judgment debtor, issue a notice to any person (hereinafter called the Garnishee) liable to pay such debt or to deliver or to account for such moveable property calling upon him to appear in court and show cause why he should not pay or deliver into court the debt due from or the property deliverable by him to such judgment debtor or so much thereof as may be sufficient to satisfy the decree and the cost of the execution.

Garnishee rules have been framed by the High Courts of Allahabad and Rangoon, and the Chief Court of Oudh. The Calcutta High Court has also drafted Garnishee rules¹ for the province of Bengal which are awaiting the sanction of the Government of India. Under the Civil Procedure Court, High Courts are empowered to frame such rules.

Sanctity of Rent

The fields of England prove that landownership on the part of farmers is not essential to good agriculture. England is pre-eminently the land of tenant farmers. Less than 14 p. c. of the farm land of that country is operated by its owners and in most cases such land is operated by hired farmers. About 86 p. c. of the farm land of England is operated by tenants who pay a fixed rent for its use.

In England, the relationship between the landlord and tenant is governed by the Agricultural Holdings Act. The Act

1. The Draft Garnishee Rules were published in the Calcutta Gazette, 13th September, 1934.

has passed through various stages in 1875, 1883, 1900, 1906, 1908, 1913, 1914, 1920, 1921 & 1923. The Agriculture Holdings Act, 1923, is a consolidation and re-enactment of all the previously existing statutes on the subject.

In England either the landlord or the tenant may bring the tenancy to a close at the expiration of any year by giving proper notice, which is generally of twelve months' or of six months' duration in special cases. The system of long-term lease is passing away, giving way to tenancy from year to year. Where such is the rule no question can arise as to the security of the landlord or the tenure of the tenant. In England both the landlords and their tenants have realised that honesty and liberty are essential to success in agriculture. In a covenant with the landlord, the farmer is found to agree "to pay the stipulated rent half-yearly: and within thirty days after it be due; under forfeiture of the lease; and further to pay the last half-year's rent two months, or a longer time, before the expiration of the term." In case of any breach of contract on the part of either landlord or tenant, damages may be claimed by the party injured. In England, there is no fixity of tenure in the sense as we understand it in Bengal. But the Agriculture Act contains provisions for compensating the tenant, should his tenancy be terminated except for certain specific causes. The reasons for which a tenant may be evicted without payment of compensation are:

(a) that he is not cultivating the holding in accordance with the rules of good husbandry,

(b) that he has failed to pay the rent due or to remedy any breach of condition of the tenancy consistent with good husbandry,

(c) that he has materially prejudiced the interests of the landlord by committing a breach which was not capable of

being remedied of any condition of tenancy consistent with good husbandry,

(d) that he has become bankrupt,

(e) that he has refused or failed to agree to a demand by the landlord as to the rent to be paid for the holding,

(f) that he has refused or failed to comply with a demand by the landlord to execute an agreement setting out the terms of the tenancy.

The landlord may apply to the local Agricultural Committee for a certificate that the tenant is not cultivating the holding according to the rules of good husbandry. If the decision of the agricultural committee is not accepted, the question may be referred to arbitration.

The rules of good husbandry, as legally defined, mean :

(1) the maintenance of the land clean and in a good state of cultivation and fertility and in good condition,

(2) the maintenance and clearing of drains, embankments and ditches,

(3) the maintenance of proper repair of fences, stone walls, gates and hedges,

(4) execution of repairs to buildings, being repairs which are necessary for proper cultivation.

The Agricultural Holdings Act 1923 gives a long list of unexhausted improvements for which compensation may be obtained by the tenant from the landlord.

Improvements for which the consent of landlords is necessary :—

(1) Erection, alteration or enlargement of buildings,

(2) Formation of silos,

- (3) Laying down of permanent pasture,
- (4) Making and planting of osier beds,
- (5) Making of water meadows or works of irrigation,
- (6) Making of gardens,
- (7) Making or improvement of roads or bridges,
- (8) Making or improvement of water courses, ponds, wells etc.,
- (9) Making or removal of permanent fences,
- (10) Planting of hops,
- (11) Planting of orchards or fruit bushes,
- (12) Protecting young fruit trees,
- (13) Reclaiming of waste land,
- (14) Warping or weiring of land,
- (15) Embankments and sluices against floods,
- (16) Erection of wire-work in hop-gardens,
- (17) Provision of permanent sheep-dipping accommodation.
- (18) In the case of arable land the removal of bracken, gorse, tree roots, boulders or other like obstructions to cultivation.

Improvement for which notice to the landlord is necessary :—

- (1) Drainage.

Improvements for which neither consent of nor notice to the landlord are necessary :—

- (1) chalking of land,
- (2) clay-burning,
- (3) claying of land,
- (4) liming of land,
- (5) Marling of land,
- (6) Purchased manure,,
- (7) Consumption on the holding by cattle, sheep or pigs or by horses of corn, cake or other stuff not produced on the holding,

- (8) Consumption on the holding of corn, produced and consumed on the holding,
- (9) Laying down temporary pasture,
- (10) Repairs to buildings necessary for the proper cultivation. Compensation for "high farming" re- the value to an incoming tenant of the adoption of the standard farming.

The Act is compulsory in principle, it is not compulsory in detail. It allows substituted compensation which must be fair and reasonable and which will be a question of fact for the arbitrator.

But for excepted cases, if the tenant refuses to agree to a proposed increase of rent from the next ensuing date at which the tenancy could have been terminated by notice to quit, or to refer the question to arbitration, he will lose his right to compensation for disturbance if the landlord, in consequence of his refusal, gives him notice to quit; and, on the other hand, if the landlord refuses to agree to a proposed reduction of rent from the next ensuing date at which the tenancy could have been terminated by notice to quit or to refer the question to arbitration, the landlord will be liable to pay compensation for disturbance if the tenant, in consequence of the landlord's refusal to accept the reduction or refer the question to arbitration, gives notice to quit, in the same way as if the notice to quit had come from the landlord.

In determining the rent properly payable in respect of a holding the arbitrator is not to take into account any increase in rental value due to improvements executed by and at the expense of the tenant without any equivalent allowance or benefit made or given by the landlord in consideration of their execution and not under an obligation imposed by the terms of the contract of tenancy, or to fix the rent

at a lower amount by reason of dilapidation or deterioration of land or buildings made or permitted by the tenant. When the award as to rent has been made it is enforceable and binding between landlord and tenant. Differences are to be referred to arbitration.

The tenant has no right of action for the compensation given him by the Act, nor, if he is sued for arrears of rent, can he counter claim for compensation.

A panel of persons is to be appointed by the Lord Chief Justice of England from whom any arbitrator nominated, otherwise than by agreement, is to be selected.

A person agreed upon between the parties or in default of agreement nominated by the Minister on the application in writing of either of the parties shall be appointed arbitrator.

Section 34 of the Act of 1923 states :

"It shall not be lawful for a landlord entitled to the rent of a holding to distrain for rent which became due in respect of that holding more than one year before the making of the distress."

This refers to limitation of Distress in respect of amount and time.

There is also limitation of distress in respect of things to be distrained. Section 35 of the Act of 1923 provides :

(1) Where live stock belonging to another person has been taken in by the tenant of a holding to be fed at a fair price, the stock shall not be distrained by the landlord for rent where there is other sufficient distress to be found, and if so distrained by reason of other sufficient distress not being

found there shall not be recovered by that distress a sum exceeding the amount of the price agreed to be paid for the feeding or any part thereof which remains unpaid.

(2) The owner of the stock may, at any time before it is sold, redeem the stock by paying to the distrainer a sum equal to such amount as aforesaid, and any payment so made to the distrainer shall be in full discharge as against the tenant of any sum of the like amount which would be otherwise due from the owner of the stock to the tenant in respect of the price of feeding.

(3) Any portion of the stock so long as it remains on the holding shall continue liable to be distrained for the amount for which the whole of the stock is distrainable.

(4) Agricultural or other machinery which is the property of a person other than the tenant and is on the holding under an agreement with the tenant for the hire or use thereof in the conduct of his business, and live stock which is the property of a person other than the tenant and is on the holding solely for breeding purpose, shall not be distrained for rent.

The dispute in respect of distress, should it arise, may be heard and determined by the county court or by a court of summary jurisdiction. Where the compensation for disturbance or for any improvement due under this Act or any enactment repealed by this Act, to a tenant of a holding has been ascertained before the landlord distrains for rent, the amount of the compensation may be set off against the rent and the landlord shall not be entitled to distrain for more than the balance.

In America where agriculture is, unlike in England, a great industry, much circumspection is observed that the tenant makes no default. In many of the north Central

States laws have been recently passed declaring that the landlord shall have a lien for his rent upon all crops grown upon the premises leased. In others, a lien can be created by agreement of the parties and it is quite common to have a clause in the lease which secures due payment of rent. In some cases, the owner of the land requires that all the produce shall remain his property until the rent is paid, and, in some cases, the tenant is authorised by the landlord to market it in sufficient quantity to enable him to pay the rent, after which he may dispose of the balance of the produce as he pleases. In some cases, the tenant gives a chattel mortgage to secure the payment of the rent. The lease as a rule, also provides for enforcing the contract. Fines are sometimes provided in case of failure to conform to the terms of the contract whether by omission or by commission. It is moreover provided in the agreement that in case either party fails to perform his part, the tenancy may be terminated by due notice at the end of the current year. A change, of course, results in loss but it is certainly better than brooking excessive negligence. The notice to terminate lease must usually be of 3 months and sometimes of 6 months.

Honest farming prevails in the United Kingdom and the United States; it obtains elsewhere also. And honest farming has two tests; first, that the farm shall be operated in accordance with the rules of good husbandry; secondly, that the farmer shall not fail to pay the stipulated rent. It must be admitted that without honest farming, the cordiality between the landlord and tenant which is an essential condition of the success in agriculture will be a far cry. It is in fact a condition precedent to it.

History records that ever since the Permanent Settlement of 1793 the landlords have been asking for stricter measures for recovery of their dues from the tenants. At every stage, except in 1799, the landlords' powers have been curtailed.

If there were honest farming, the need for restriction of the tenants' powers would be little felt. The advanced position of English agriculture is due, in a great measure, to an excellent system of adjusting the relations between the landlord and the tenant. In English Agriculture, along with the perfecting of the Agricultural Holdings Act, there has been the growth of a sense of justice in the minds of both the landlords and the tenants. In Bengal, we need this, the sense of justice, sense of fairplay in the landlord and of reciprocity in the tenant.

The conception of landlordism in Bengal is sure to be revolutionised if there are inroads on the sanctity of rent. It is essential to good agriculture that the tenant should make no default. A defaulting tenantry discloses one of two conditions: the uneconomic nature of holdings, or the wasteful movement of the human factor. In any event, progressive agriculture becomes a thing of the past. The absence of powers for recovery of legitimate dues from the tenants impairs the ownership of land; it does also adversely affect the value of land. It is a blot on our tenancy legislation that there are no effective provisions for speedy recovery of arrears of rent.

Nationalisation of Zemindaries

The nationalisation of zemindaries is advocated in our country as it is supposed to offer justice to the cultivators and to bring in substantial profit to the Government. The social principle that prompts the advocacy of such re-adjustment of the structure is obviously borrowed from the West, though historically it can be maintained that peasant-proprietorship and state-landlordism existed in the Hindu and Mahammedan periods respectively.

The nationalisation of zemindaries would not be helpful for the ryots. Occupancy ryots pay a customary rate of rent,

the rate being a little over Rs. 3 per acre. They form the majority and have definite and invulnerable rights in the soil under the Bengal Tenancy Act and, subject to punctual payment of rent, they are practically co-partners with landlords. If the land is nationalised, the customary rate of rent is likely to give way to competition-rent which will be inordinately high and the vested rights of ryots will be prejudicially disturbed. It may be, and perhaps will be, argued that nationalisation, as understood in our country, is to the effect that the State would only step into the shoes of Zemindars and that the rights of ryots would remain as they are. If such a situation is contemplated, it may be legitimately said that that would be a wrong move on the part of the Government to come into direct touch with the ryots without the corresponding privilege of sharing in their general prosperity. If the state-ownership of land is associated with all the disabilities and disadvantages which belong to the landlords, the Government could not shape better than the landlord of to-day. The Government in their attempt to realise their dues punctually, and necessarily harshly, direct from the ryots would be simply inviting their wrath and curses: that would breed friction and irritation between the Government and the people. For this very diplomatic aloofness on the part of the Government, the need for a buffer institution, such as private landlordism, exists.

Secondly, it is not a fact, as is commonly supposed, that the State would be a gainer if the land were purchased and paid for in perpetual annuities. The task of ascertaining the annual value of the land of a country is simply an impracticable task. The magnitude and minuteness of the work of estimate which would be needed will at once appear when it is remembered that in a province like Bengal, the land may be sub-divided into many millions of plots, greatly differing in their annual value. The nature of the soil and the climate, the cost of cultivation and the facilities for irri-

gation, the proximity of highways and markets, the quantity and current value of the annual produce—all these factors shall have to be taken into consideration in order to reach the market-prices of lands. Two contiguous fields often vary considerably in their degree of fertility and they are to be differently priced. Moreover, in Bengal the existing rents have no relation to the market value of the land: there are fertile lands fetching lower rents and there are dead lands having higher rents. And the attempt to ascertain the annual value of land on a certain multiple of the existing rents would be thoroughly unsatisfactory.

Even if the difficulties of ascertaining the value of the land are overcome, it would be a dubious proposition if the State would be a gainer in the event of owning the rights and privileges of the Zemindars. The facile method of computing the gain of the State is in the following manner:—

Gross Rental collection—Nearly Rs. 16,00,00,000

Collection charges—10 p.c. of Rs. 16,00,00,000.

Land Revenue to Government—Rs. 3,10,76,036.

Cesses payable to Government—Rs. 89,28,974.

The profit that is supposed to accrue would go to the Government if the State steps into the shoes of the landlords. Let us examine this hypothesis.

First—The premises of computing the alleged profit of the Zemindars by showing the rental in one column and the land revenue and cesses payable to Government in the other are inherently wrong. The increased rental and the proportionately low revenue do not indicate the economic position of the Zemindars inasmuch as the supposedly huge profit is not intercepted by them alone but also by a large number of tenure-holders who form the middle class population of Bengal. If under any scheme of nationalisation, the

distribution of the gross-rental among a large number of tenure-holders is prejudicially affected, it would mean ruination of the middle class which is Bengal's pride. But if it is proposed not to touch the tenure-holders in any way, the alleged huge profit which theorists are counting on behalf of Government does not obviously stand. This significant fact, characteristic of Bengal's rural economy, should not be lost sight of in any dissertation on land problems.

Secondly—If the supposed profit were a factual reality, the landlords who are well-entrenched in their rights would naturally refuse to part with their profit, and they cannot be robbed of their privileges unless the State embarks on a revolutionary policy of expropriation. The advocates of nationalisation of zemindaries point out that the landlords are heavily indebted and in straitened circumstances and many touzis are being sold for arrears in revenue. If this be the real state of the landholding community, and in fact that is the position to-day, it invariably rules out the hypothesis that the landlords do make the alleged huge profit: that simply proves that there are inevitable circumstances which are bringing about the economic collapse of the landholding community. In that event, it is clear as daylight that the Government in the role of landlords would be faced with the same problem that faces the present land holders, especially when the Government are not going to have more than the restricted rights and privileges of landlords.

Thirdly—In the above calculation there is no mention of, far less emphasis on, the question of arrears in rent and cesses. A large amount of the alleged profit of landlords is consumed in arrears, and since 1929, it has been the common experience of landlords of not being able to realise the amount of revenue and cesses payable to Government. And the result has been either a loan or a draft from the bank-balance by the landlords to continue their very

existence. Even in such stiff years, landlords have been punctual in payment of their dues to Government though they are threatened with scanty realisations from their tenants. It is an eloquent case of martyrdom on the part of the landholding community which receives no recognition from the Government or the public. The Land Revenue Administration Report of Bengal for the year 1930-31, a year of depression, records that Government as landlords could collect only 56·10 p.c. of the current demand, while the collection from the Zemindars in the permanently settled estates was over 90 p.c.

The Report discloses that Government, though armed with the certificate power, failed to realise the actual dues. And it is only natural that the landlords of to-day with impaired ownership fail to realise more than 50 p.c. of their demand. But the public exchequer is not allowed to suffer from scanty realisations of the landlords. The situation can be better imagined if the landlords recede from the picture and the Government step in to realise something like 56 p.c. of their demand under land revenue with all the rigours of certificate power, a situation at once uncomfortable and distasteful to the ryots and Government.

Fourthly—If the State were the owner, the cost of collection would immensely rise high. The Government with their formal red-tapism, costly machinery, centralised administration do expend more in collections than non-official agencies. The expenses of the management of Khasmahal estates are in all cases higher than in private estates.

Fifthly—It is very important to note that the increase in wealth of a Government is to be found in the growing wealth of its people. If the Permanent Settlement yields more profit for the landlords and tenants and less for the Government, it need not be taken as a sacrifice beyond repair on the part of Government. The prosperity of the people is an asset

to Government and if the State be found a loser in land-revenue demand, it is a gainer in stamps and customs demands and also in income-tax receipts. If under the proposed scheme, the Government step in as landlord and dry up the resources of the landholding community, the land-revenue demand may increase at the cost of stamps, customs and income-tax demands. The certificate power on the part of the Government would dwindle the stamps revenue; the drying up of the resources of landlords would affect the customs and income-tax demands. In the indecent attempt for augmenting land-revenue demand, it would be a suicidal move to asphyxiate other sources. The Government in its attempt to hurt the landholders would hurt itself.

Sixthly—Landlords by losing contact with the land and their tenants will naturally slacken their efforts for the improvement of villages. In spite of unsympathetic tenancy legislation, the majority of the landlords maintain their family charities and endowments; they have expended and do expend large sums of money for education, sanitation, roads and other crying necessities of the villages. The landlords also function as unrecognised agencies in the supply of rural credit which is of inestimable benefit to the tenant population. The nationalisation of zemindaries will sever the contact of the landlords with the tenants in all forms, and the rural organisation, as it is constituted, will be thoroughly revolutionised, the repercussions of which will be felt very far and sometimes in unexpected quarters.

The growth of uneconomic holdings is the supreme problem before the country. It is a recognised fact that nearly half of the tenant population possesses holdings below the subsistence limit of three acres. It is with a view to prevent holdings from being reduced below the economic limit that the questions of legislation and nationalisation arise. It would not touch the fringe of the problem if the Govern-

ment merely purchased the land by guaranteeing to the expropriated landlords the annual payment of their existing rents and security for themselves and their heirs. The problem lies deeper : mere change of hands is an extremely unwise step unless the Government acquire the power and programme of resettling the tenantry on the estates with restrictions of sale, mortgage or transfer and prevent such holdings being reduced lower than the economic limit and also of supplying facilities for credit to the tenants so that they might work on the holdings free from debt. Here the magnitude of the problem becomes evident. The vested rights of ryots are to be disturbed thoroughly and new legislations shall be necessary to maintain and protect economic holdings. Thus the situation cries for tenancy legislation on modern approved lines and the need for replacing or disturbing the landlords does not arise at all.

In Bengal, the preservation of the holdings on economic level has been a difficult task for the existing tenancy legislation. It was an evil day for Bengal when Sir Richard Temple's efforts in the seventies of the last century were set at naught and the Administration of Sir Ashley Eden taking advantage of the landlords' demand for alteration of procedure law for speedy realisation of rents and arrears brought about important and significant changes in the substantive law between landlords and tenants. The Administration did not heed the landlords. Government have now made occupancy rights transferable. The position is that the tenancy law of Bengal permits the capture of occupancy privileges by the middle classes with the regrettable result that the status of the peasantry is lowered. The sound principle is that occupancy rights should accrue only to the tillers of the soil and that the occupancy right should extend to so much of one's holding which is above the size of economic holding, sufficient enough to be cultivated by him or his family without hired labour.

It is sufficient to remark that landlords are in no way responsible for the miserable condition of the tenant population. It is the tenancy legislation which has encouraged the diminishing of the size of holdings. Therefore, the attempt to remove the Zemindars from the picture on the plea of nationalisation will be a tragedy of nation's energies wasted.

CHAPTER VI

THE RYOT .

The relation of landlord and tenant in our country is not one of personal dependence, it is that of a lessor and lessee. And it is well-known that "the modern conception of lease is that it is a form of bilateral contract which creates no relation of personal dependency." Lease is a means for transferring the use and benefit of property for a determinate period in order to secure a return in the form of rent. The Tenancy Act of Bengal, as would be shown later on, entitles a ryot holding land for twelve years to step into occupancy rights which can hardly be distinguished from the rights of ownership. Thus the lease for a definite and determinate period develops into a perpetual lease which, economically though not legally, is as good as ownership. The form of tenancy which is crystallised in an occupancy ryot under the Bengal Tenancy Act is very much akin to "Emphyteusis" in the Roman Law. "Emphyteusis" was a grant of land either in perpetuity or for a long term on condition of payment of an annual sum to the owner or his successor. It was neither sale, nor hire, but a special juristic transaction. The tenants' right was as complete as the owner's. He clearly had the right of use and enjoyment, the right to alienate the property by sale, subject to the owner's right of preemption, and the right to mortgage it and transmit it to his heirs and he had to pay taxes. There is thus, in fact, double ownership of land. An examination of the incidents of occupancy right under the Bengal Tenancy Act 1928 would go to show that there has been a vertical division of possessory rights—division between the owners and the ryots. Land is the basic element of production and the foundation of our national existence, and things in our province, as is ignorantly complained of, have not moved

on rigorous lines of individualistic property. Lands are not within the unrestricted control of owners; there has been large multiplication of private interests in land. There has been splitting up of interests which the modern canons of distribution seek to bring about. There is no touch of mediæval feudalism and the owners are enjoying lands subject to the enjoyment of the ryots.¹

The incidents of occupancy-right are various. Section 23 of the B. T. Act says that an occupancy ryot may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy. He shall be entitled to plant, to enjoy the flowers, fruits and other products, to fell and utilise or dispose of the timber of any tree on such land (section 23A). He shall not be ejected² from his holding except in execution of a

1. For definition, vide section 5 of the B. T. (Amendment) Act, 1928:—

“Raiyat” means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family or by (servants or labourers) or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

A person shall not be deemed to be a raiyat unless he holds land either, immediately under a proprietor or immediately under a tenure-holder.

In determining whether a tenant is a tenure-holder or a raiyat, the Court shall have regard to

- (a) local custom; and
- (b) the purpose for which the right of tenancy was originally acquired.

Where the area held by a tenant exceeds one hundred standard bighas, the tenant shall be a tenure-holder until the contrary is shown.

2. This section should be read along with ss. 65, 89, 155 and 178 (i) (c). Sec. 65 provides that a permanent tenure-holder or a ryot holding at fixed rates or an occupancy ryot shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable

decree for ejectment on the ground that he has rendered the land unfit for tenancy or that he has broken a condition, consistent with the provisions of the B. T. Act (Section 25). An occupancy holding or a share or a portion of it is transferable (Sec. 26B) and may be transferred or bequeathed as other immovable property. Transfer contemplated may take any of the following forms—(1) Sale (voluntary); (2) Gift; (3) Exchange; (4) Bequest; (5) Complete usufructuary mortgage; (6) sale in execution of a decree or a certificate under the Public Demands Recovery Act III (B.C.) of 1913, other than a decree or certificate for arrears of rent or dues recoverable as rent; (7) other kinds of transfer viz :—Partition, lease or simple mortgage, usufructuary mortgage, mortgage by conditional sale until a decree or order absolute for foreclosure is made.

The incidents of occupancy right show the bifurcation of the ownership of lands between landlords and occupancy ryots. They explode the contention that ryots have no rights of their own and that they are being crushed under the deadweight of landlords' unrestricted whims. Theoretically, of course, there is no peasant proprietorship in Bengal but the conditions as obtaining under the Bengal Tenancy Act bear all such characteristics. It is also a fact that the great majority of ryots in our province are occupancy ryots.

Section 6 of Act X of 1859 laid down—"Every ryot who has cultivated or held land for a period of twelve years has

to sale in execution of a decree for the rent thereof and the rent shall be a first charge thereon. Sec. 89 says that no tenant shall be ejected from his tenure or holding except in execution of a decree. This section specifies two grounds (a) and (b) under either of which a decree for ejectment may be passed. Of these (b) speaks of a condition consistent with the provisions of this Act, and sec. 178 (1) (c) says that nothing in any contract between a landlord and tenant before or after the passing of the Act shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act. Sec. 155 prescribes a notice as a condition precedent to relief against forfeiture and the nature of the decrees that may be passed.

a right of occupancy in the land so cultivated or held by him so long as he pays the rent payable on account of the same." The expression, "right of occupancy," was used for the first time by the Legislature in 1859 and the classification of ryots into the "Khudkast" and the "Paikast" was done away with and a new one was introduced, less complex but with incidents more favourable to the cultivating classes. It has been shown that the incidents have increased and they have reached culmination in the B. T. (Amendment) Act 1928. "The same levelling hand of the Legislature that had brought down at the Permanent Settlement the ancient Rajas, and had elevated the farmers of revenue to the position of Zemindars, created, in the year 1859, a right for the mass of the agricultural population, which raised them from the position to which they had been reduced on account of the want of any definite rules for the guidance of courts of justice and the consequent introduction of rules of law with which English lawyers were familiar." Now after 1928, no such complaints could be legitimately made; the incidents of occupancy rights have nearly assumed the proportion of owners' rights. The B. T. Act offers no obstacle to the right of occupancy being acquired by a ryot. Possession and cultivation of land and payment of rent are all that are necessary to confer on the ryot this right of occupancy.¹

1. The various judicial decisions show who might acquire right of occupancy and under what circumstances. Some of these are:—Only tenants who cultivated their own lands or sublet them to actual cultivators of the soil were entitled to rights of occupancy. It was, however, not restricted to those who actually till the soil with their own hands but was held to apply to those who are bonafide cultivators in the sense of deriving profits from the produce directly. The mere fact of a party subletting did not make him a middleman, excluded from the privileges of the sections, the real question for trial being whether he was or was not a ryot, or one who had land under cultivation by himself or by others who took from him under his supervision as a superior cultivator or whether he was a middleman because he did not cultivate it in the sense of the section, but was a general

Sub-section 2 of section 18 of the B. T. (Amendment) Act 1928 states that a ryot at a fixed rent or rate of rent may acquire a right of occupancy. Section 48 G of the said Amended Act of 1928 states that underrryots who have already got rights of occupancy by custom will acquire occupancy rights by statute and the incidents of such rights have been defined, namely, that they will have as against their immediate landlords all the rights of occupancy-ryots except the new right of transferability (as provided for in sections 26A to 26J).

leaseholder or speculator in the land. The section did not exclude from right of occupancy persons holding from ryots, but only those holding from ryots who themselves had no more than a mere right of occupancy. A ryot who paid rent in kind could acquire a right of occupancy if he was in possession of or cultivated land for 12 years and if he had paid rent in kind for the same. A ryot who cultivated neejote land belonging to the proprietor of an estate where the land had not been leased to him for a term or from year to year could acquire a right of occupancy. A ryot holding for 12 years under one of several proprietors could acquire a right of occupancy provided he had paid his rent, which payment he might, in the absence of fraud, make to any one of the co-proprietors he chose. Wrongful eviction was held not to be such interruption of possession as would prevent a ryot from acquiring a right of occupancy. Even a ryot whose potta was rejected as unreliable could acquire a right of occupancy. Setting up a fabricated document to prove long possession did not bar a claim to right of occupancy. Even if an original tenant abandoned the land, one who occupied it for 12 years adversely to the interest of that original tenant might acquire a right of occupancy and this was held to be so even if the abandonment was involuntary e.g., if the original tenant had suffered transportation. When a ryot's possession commenced under a jotedari right created in his favour by the ijardar he was entitled to a right of occupancy provided there has been a continuous holding for a period of 12 years, notwithstanding the expiration of the lease of the ijardar. Even if the land was let by one of several owners the ryot would acquire a right of occupancy. A right of occupancy could be acquired by a person holding under a limited owner. A ryot could acquire a right of occupancy even though the person under whom he held had no

We shall also have to admit that the provisions of the Regulations of 1793 were in favour of the tenant. "The general provisions of the Regulations of 1793 were in favour of the tenant. The theory of the Permanent Settlement was to give to all under-holders, down to the ryots, the same security of tenure as against the Zemindars, which the Zemindar had as against the Government. Sub-holders of talooks and other divisions under the Zemindars were recognised and protected in their holdings subject to the payment of the established dues. In respect of the ryots, the main provisions were these: all extra cesses and exactions were abolished, and the Zemindars were required to specify in writing the original rent payable by each ryot at the pergunnah or established rates. If any dispute arose regarding the rates to be so entered, the question was to be determined in the Civil Court of the zillah in which the lands were situated, according to the rates established in the pergunnah for land, of the same description and quality as those respecting which the dispute arose. It was further provided that no Zemindar should have power to cancel the leases except on the ground that they had been obtained by collusion at rates below the established rates, and that the resident ryot should always be entitled to renew pattaahs at these rates. In fact fixity of tenure and fixity of rent-rates

title to the land. It was only when the occupancy was inherited that the occupancy of the predecessor was considered as the occupancy of the tenant in possession. A ryot who had held or cultivated a piece of land continuously for more than 12 years, but under several written leases, or pottas each for a specific term of years was held entitled to claim a right of occupancy provided there was no express stipulation to the contrary in the pottas. A ryot for the purpose of acquisition of a right of occupancy could count time in his favour, both when he was in sole possession as well as in possession jointly with others. Persons holding as simply ryots for 12 years before or after their holding as farmers might acquire a right of occupancy.

were secured to the ryots by law. It has already been pointed out that provision was made for canoongoes and putwairs, the object of whose appointment was declared to be to prevent oppression of the persons paying rent." The status that was designed for the tenancy was however impaired by the great powers given to the Zemindars under the old huftum (seventh) and "Punjam" (fifth) Regulations.¹ The whole Rent Law was rescinded by Act X of 1859, reducing the rights of the Zemindars and transferring rent suits to civil courts where the rights of the ryots are better respected. The Act VIII of 1869 made no change in the substantive law but merely re-enacted Act X of 1859 with procedure sections omitted and re-transferred the jurisdiction as to trial of cases between the landlords and tenants from the Revenue Courts to the Civil Courts. The Act VIII of 1885 was a clear recognition of the rights of the ryots.

In this connection it may be said that the tenancy system as it exists in Bengal is very much complicated inasmuch as there are grades of ryots, the one class having distinct better rights and privileges than the other. All these gradations are potential sources of disruption in the economic organisation of rural Bengal. The fact that the under-ryots need protection shows that peasant proprietorship is not solvent of the ills. For the simplification of the tenancy system the most ideal way is to declare all ryots as occupancy ryots. In the Central Provinces the Tenancy Act of 1920 has made every tenant, whatever the length of his occupation, to be an occupancy tenant or a tenant with a permanent right of occupation. This right is made heritable but the tenant is not given an unrestricted power of transfer, the law permitting subletting for one year only. If all the ryots are

1. Under the "huftum" process (Regulation VII of 1799) the person of the ryot could be seized in default; under the "punjum" process (Regulation V of 1812) his property could be distrained.

placed on the same status, the question of protected or unprotected tenants does not arise. In our province, "the substantial cultivator is relinquishing his personal labour in the fields and depending more and more on hired labour or on the share system. This is an ominous system which is bound later to be followed by a conflict between the higher and the lower peasantry, as in Russia or Germany." The economic independence of the inferior class of tenants should be preserved. "The typical peasant should be the man of moderate standing who does not enrich himself at the expense of his neighbours and at the same time does not occupy any position of inferiority in their regard. If the economic advantage gained by the cultivators results only in their joining the ranks of the parasites on agriculture, it is all the more necessary to improve the status of field-labourers and farmhands." The rights and privileges leading to the deterioration of the position of the tenantry should be restricted. "This is the dictate of agricultural economics, to which we must listen if we wish to rescue our agriculture from its present stagnation." A ryot under no circumstances should have opportunities of becoming a rent-receiver; he should remain a wealth-producer and must play his old and honourable part in the agricultural operations. Judged by this standard, the tenancy legislation of the province is travelling towards wrong direction.

The Bengal Tenancy (Amendment) Act IV of 1928 removed nearly all the grievences of the ryots such as the repeal of the provisions of distraint and crystallising many customs in law such as the right of transferability of occupancy ryots.

The recognition of the interest of a ryot at fixed rent as protected interest, lapsed landlord's fees to be credited to District Boards, the right of the occupancy ryots over all kinds of trees, reduction of rent in the event of the refusal

or neglect of the landlords to carry out the arrangements regarding irrigation or embankment, the deletion of the provisions about commutation of produce rent, definition of the incidents of occupancy rights acquired by under-ryots, rights given to ryots to excavate tanks or build pakka houses (salami for such purposes being treated as abwab), no higher rate of interest on rent than provided for in section 67—all these are some of the many principal changes made in the Amendment Act of 1928.

Produce-Sharing Tenants

In Bengal, produce-sharing tenants¹ are on the increase. In West Bengal, such a metayer tenantry is natural where crops are uncertain on account of flood and uncertain rainfall. So we find "bhag-chasis" and "bhag-kars" in West Bengal. In East Bengal, crops are assured, still the "bargadars" have appeared. The landlords supply cattle, plough, seed and manure and they get a half-share or two-thirds.

The reasons for the spread of produce-rent system in West Bengal are the following: (1) the cost of agriculture has increased and cultivation is becoming uneconomical, (2) smaller families and malaria help the subletting on the produce-sharing basis, (3) money-lenders find produce-rent system profitable.

The produce-sharing tenant is regarded as a tenant-at-will. The Bengal Tenancy Act gives extremely inadequate protection to the produce paying peasants. The Amending

1 Dr. Radhakamal Mukherjee has an interesting discussion on produce-sharing tenants in his "Land Problems of India."

Act of 1928 has recognised only the "dhankararidars" who pay a fixed quantity of produce as ryots or under-ryots.

In the Bankura district, no less than 11 p.c. of the total area in possession of settled ryots is held on "sanja", the rent of a fixed amount of the produce irrespectively of yield. In Midnapur, the proportion is 4 p.c.; occupancy ryots who pay a produce-rent form 8·07 per cent of the total number of interests. The figures for Bakerganj are 3·5 and for Dacca 2·2. In Faridpur there are found to be 91,744 acres held by ryots at produce rents.

Produce-sharing tenants are common in the United States but they do not exist in the United Kingdom. To develop a healthy form of *metayage* in Bengal, produce-sharing tenants should be prevented from arbitrary ejection and also assured of at least half the share resulting from land improvements by their labour and capital; the share demandable by landlords should be fixed by law.

Pre-Emption

There has been much ado about the right of pre-emption on the part of the landlord. It has been proclaimed that this right of pre-emption is an injustice to the ryots but in fact it is not. Section 26B lays down that holdings of occupancy ryots with occupancy rights are transferable. Section 26F lays down that "except in the case of a transfer—

(a) to a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase,

(b) in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913 for arrears

of rent due in respect of the holding or dues recoverable as such,

(c) by exchange, or

(d) referred to in the second proviso to section 26D,¹ the immediate landlord of the holding or the transferred portion or share may within two months of the service of notice issued under section 26C or 26E apply to the Court that the holding or portion or share thereof shall be transferred to himself."

This right of pre-emption has been conferred on the landlords to prevent the introduction of undesirable tenants. There are money-lenders in our country who are simply waiting in ambush for the dispossession of the rights of the ryots. This right of pre-emption is a safeguard for the *bona fide* agriculturists against the greedy money-lenders. It is quite in the fitness of things that the immediate landlord should have the right to purchase to the exclusion of the right of foreigners to come in and step into the shoes of landlords. This right of pre-emption may act as a bar to the wealthy money-lenders or solvent outsiders to buy lands and thereby scotch their desire to play the role of landlords. The right of pre-emption should exist, if not for anything else, at least for nipping in the bud the aggressive desire on the part of outsiders to interfere with the rights of landlords and interests of ryots.

There are two points to be noted in this connection, first, the percentage of cases where the right of pre-emption

1. Second Proviso of section 26D states: 'The landlords' transfer fee shall amount (b) in the case of the sale of a holding, in respect of which a money rent is payable, to twenty percent of the consideration money as set forth in the instrument of transfer, or to five times the annual rent of the holding or of the portion or share transferred, whichever is greater.

was exercised was in fact infinitesimal; secondly, the ryots in the case of pre-emption did not suffer in price. The following figures, compiled by the Hon'ble Sir P. C. Mitter, would make the point clear and the charge against the landlords over the question of pre-emption stands condemned :—

Period	From 1-4-31 to 6-3-32
Total number of sales under section 26B of the Bengal Tenancy Act	1,10,362
Total number of applications under section 26F of the Bengal Tenancy Act	1,144
Area as stated in deed of transfer	4556-1-3 bighas
Amount of consideration money	Rs. 1,21,983-6-3

The percentage of the area in respect of which pre-emption was exercised (4,556 bighas) to the area to which the Bengal Tenancy Act applies (65304 sq. miles) is .003.

The total consideration of all sales under section 26B is Rs. 1,60,89,450 and the consideration of the sales in respect of which pre-emption was exercised is Rs. 1,21,983 and the percentage of this to the total consideration is .75. The average price was nearly Rs. 27 per bigha in 1931-32, a year of great economic depression and Sir P. C. Mitter has stated that the average price was Rs. 27 per bigha in 1929-30.

Landlord's Transfer Fee

Transfer fee, strictly speaking, carries with it a touch of mediæval feudalism but the conditions obtaining in the province vote for it. By the Regulations of 1793, the proprietorship of the soil was conferred on the zemindars and

the transfer fee is a recognition of that proprietorship. Before 1928, there was no fixity of transfer-fee but in 1928 there was a statutory recognition of transfer-fee. The law is this :—

(a) Sale :—For holdings paying produce rent wholly or in part the landlord's transfer fee shall be 20 per cent of the consideration set forth in the instrument, and for holdings bearing money rent, 20 per cent of the consideration or 5 times the annual rent whichever is greater [s. 26D (a) and (b)]; in the case of a court sale, 20 per cent of the purchase money or 5 times the annual rent whichever is greater [s. 26E (1)].

(b) Gift :—The landlord's transfer fee shall amount to 20 per cent of the value set forth in the instrument or 5 times the annual rent whichever is greater [s. 26D (d)].

(c) Bequest :—The landlord's transfer fee shall be 10 per cent of the value as determined by the Court for the purpose of stamp duty for probate or letters of administration or $2\frac{1}{2}$ times the annual rent whichever is greater [s. 26D (e)].

Whether the compromise of 20 p.c. is fair or not, that is a different question altogether. But the transfer fee must remain, as that is an indirect admission that the zemindars are the proprietors of the soil. Anything which votes against the proprietorship of the zemindars would administer a deep cut across the fundamental principles of the Regulations of 1793. The legalising of "salami" at 20 p.c. was considered to be fair because the customary "salami" was 25 p.c. to 75 p.c. and it varied according to the quality of land and the kind of crop raised thereon. The "salami," though feudal in character, exists in some form or other all over the modern world where capitalism holds the field. It can only go to wall, where capitalism is voted down and a new order

of society is given shape. As long as proprietary rights and vested interests remain, there can be no way out of it.

Credit Economy

The prime need of ryots is not an amendment of the tenancy legislation but an improvement in their income; to put it euphemistically, the need is money and not law. There are grave defects in the economic organisation of our province but the worst defect is the absence of arrangement for improving the credit economy of rural Bengal. The serious handicap is the low purchasing power of the people; over and above that, the agriculturists of Bengal are heavily indebted, the debt being estimated at 100 crores of rupees. Unless the purchasing power of ryots is increased, the future of the province is extremely gloomy. A slight increase in the purchasing power of the agriculturists who predominate in our province would favourably react on our Government Budget and National Budget; the province would then again wear a smiling look.

The purchasing power of the agriculturists, as is well-known, can be increased by reduction of social costs and various other methods. The following methods, among others, would go a great way towards improving the purchasing power of the people :

- (1) financing agriculturists at low rates of interest;
- (2) better marketing of agricultural produce;
- (3) improved communications;
- (4) improvement in public health,
- (5) training of the character of agriculturists by education and habits of thrift and saving;
- (6) training of labour;

- (7) improved methods of agriculture and intensive cultivation;
- (8) better utilisation of leisure and spare time;
- (9) stoppage of wastage by co-operative efforts;
- (10) stoppage of leakages through social, religious and ceremonial affairs, by a new orientation of outlook.

In order to effect an increase in the income of the people, agriculture must be made a paying proposition. In the production of a commodity, there must be a command of capital. The cultivator has no capital but requires it; therefore borrowing becomes a necessity. The need for borrowing on the part of the cultivator in Bengal arises from various causes: to effect permanent improvements on land; to purchase cattle and implements (which may be regarded as fixed capital of his business); to carry on the current agricultural operations such as purchasing seed or manure or employment of hired labour, if necessary; to eke out subsistence in case of failure of harvest or in case of prolonged illness of the raiyats; to meet the expenses of the year when the year's crop is not ready; to meet contingencies brought about by want of foresight when the crop fetches low rate; to meet expenses of litigation and for social and ceremonial purposes.

Borrowing is not *per se* an evil; it becomes an evil because it is resorted to for unproductive purposes. The cultivators are extremely improvident and they foolishly waste their resources on extravagance. "The great majority of agricultural debtors get into debt through improvident expenditure upon domestic ceremonies and in particular upon marriages."¹

1. Jack in "Economic life of a Bengal District." In an economic survey of a typical village made by Mr. Burrows, it was found that 57 p.c. of the debt was incurred for marriages, 18 p.c. for the purchase of cattle or land and the rest for various reasons.

The cultivators, as is well-known, spend lavishly after the annual harvest is reaped and no surplus accumulates for meeting the distress of emergency. Thus they need borrowing and do borrow for consumption; that is the tragedy of it. The loans for consumption are given by the money-lenders at high rates of interest. The debt goes on increasing and entangles the ryots and it is always unproductive to redeem unproductive debts and the attempt at redemption resolves itself into blaming one's fate while the securities, either of crops or of land, pass into the creditors' hands. The creditors get into "occupancy rights" and let the lands out to them as under-ryots. The cultivators of Bengal do not live for profit but for subsistence; even that they do not get. "The crowding of the people on the land, the lack of alternative means of securing a living, the difficulty of finding any avenue of escape and the early age at which a man is burdened with dependents, combine to force the cultivator to grow food wherever he can and on whatever terms he can. *Where his land has passed into the possession of this creditor, no legislation will serve his need; no tenancy law will protect him; for food he needs land and for land he must plead before a creditor to whom he probably already owes more than the total value of the whole of his assets.*"¹

The high rate of interest restricts the employment of capital in the cultivation of land and thus checks the production of agricultural wealth in the province. The agricultural industry of the province is sacrificed at the altar of the greed of the money-lending capitalists. "The secret of successful industry is to buy your finance cheap and sell your produce dear. The Indian buys his finance dear and sells his produce cheap. His creditor generally fixes the price of both. The ryot feeds

1. Vide Report of the Royal Commission on Agriculture in India, p. 433.

the financier in the fat years and the Government feeds the ryot in the lean. Trade flourishes on the labour of bankrupt people, for three-fourths of the people of India are unable to pay their debts. The country is run by a system of forced labour, the force being that of the money-lender."¹

This agricultural indebtedness² is the greatest handicap to rural progress. This indebtedness is not due to the fact that there is want of capital in the country but that it is in the wrong hands and the greatest problem is "how to shift the control of capital from the hands of the non-producers to those of the producers of the country's wealth." It is this organisation of capital that we need for our progress. Improved agriculture and improved finance must go together and the need of the hour is how to achieve "improved finance." Until it is achieved, we shall look in vain for agricultural prosperity. There are a few characteristics of agriculture which should be fully grasped before dealing with the problem of agricultural finance. These peculiarities which are referred to by the Central Banking Enquiry Committee are as follows:—

(1) In agriculture, the units of production are essentially a one-man concern—and the credit available for the concern is limited to the credit of one man or one family. Agriculture remains scattered, individualistic, small-scale and

1. Sir Daniel Hamilton's statement before the Chamberlain Commission.

2. The causes of indebtedness may be summarised as follows:—

Poverty with precarious climate and irregularity of income; ignorance and improvidence; extravagance; ancestral debt; expansion of credit; increase of population without corresponding increase of return; facilities for borrowing owing to influence of money-lenders; the limitation laws leading to renewals on usurious terms including compound interest; fair rate of rent and many rights allowed by tenancy legislation exciting the cupidity of money-lenders.

chaotic. "While the industrialist can capitalise the future, or raise money on estimated earning power, the agriculturist cannot. While, therefore, the manufacturer raises his capital by subscription, the farmer must raise much of his capital by credit."

(2) In the very nature of things, the agriculturist is isolated and remote from the normal opportunities of obtaining credit. "For the greater part of the year and especially when he is most in need of credit, his capital is sunk in forms of wealth, difficult for any one but an expert to value and not readily chargeable as security for an advance, while his personal training and methods of life are not such as to fit him to surmount these natural disadvantages and to establish that position in the credit market to which his financial stability and high standard of probity generally entitle him."¹

(3) In agricultural production and also of particular agricultural crops, there is inelasticity of supply and the comparative difficulty of adjusting the supply to fluctuations in demand. "Out-put cannot be stopped on a farm as it can be in a factory; if the land is not cultivated by man, it will produce its own crops of weeds. The need for finance thus remains constant, though production may be unprofitable."

(4) The phenomenon of over-production affects agriculture most, because the agriculturists are disorganised and have no such organisation "which can undertake the enormous task of providing them with the necessary credit for regulating the supply of their produce."

(5) The principal security in agricultural finance for a long term is the land which is unsuitable in commercial banking, for land is not a readily realisable asset and its price is

1. Report of the Committee of Credit in England (1923).

liable to peculiar influences. Investments in them (so far as commercial banking is concerned) are so much frozen credit.¹

(6) The liquid and easily realisable assets of the cultivator to back up a banking credit are his crops or live-stock or dairy produce. Even these are precarious forms of security owing to the physical risks to which production is subject, such as floods, failure of monsoon, pestilence among live-stock and so forth.

In view of the peculiarities of agriculture, the Report on Agricultural credit in England (1927) rightly emphasised that "credit for agriculture has come to be treated as a special

1. "The lack of homogeneity in land and the difficulties inherent in land valuation obviously disqualify land as a measure of value. But even in the more modest task of serving as a basis for the issue of notes in terms of the standard metallic currency, the usefulness of land is rather limited. The notes of the English land banks failed to gain general acceptance because of their doubtful redeemability. But even if land banks notes were to have an immediate recourse to specific plots of land, lack of mobility and liquidity, characteristic of land and the fluctuation of land values would be sufficient to deter many from accepting land notes as readily as coins or notes redeemable in coin. In the case of the John Law Scheme and French assignats, where initial acceptability was assured by governmental sanction, the value of the notes was soon impaired by overissue. Even with the co-operation of the money issuing authorities, however, land provides no criterion for the volume of money required and a currency based on land would not possess sufficient elasticity in adapting itself to needs of trade. On the other hand, where, as in the case of the Danish and German experiments, the size of the note issue was determined upon grounds other than the amount of land and once fixed was rigidly adhered to, the temporary use of land as a material basis for the issue of notes supplied the psychological stabilising factor which was essential to the restoration of public confidence, a confidence which had been thoroughly shaken by the almost complete depreciation of the standard currency." Wilhelm Vershofen in "Encyclopaedia of Social Sciences."

question requiring, in many cases, special organisation and, generally, special legislation."

According to the Bengal Provincial Banking Enquiry Committee's report the average debt of a Co-operative family in Bengal has been ascertained to be Rs. 147; the per capita unregistered debt is about Rs. 18 compared with the per capita registered debt of Rs. 16, the total coming up to Rs. 34. The agricultural debt of the province is roughly estimated at Rs. 100 crores. The total requirement for short term or intermediate loan is estimated to be Rs. 96 crores. The loans are now supplied by the Co-operative Societies to the extent of 4 crores and by loan offices to the extent of 2 crores. Under the Land Improvement Loans Act, the sum of Rs. 93 (in thousands) and under the Agriculturists Loans Act, the sum of Rs. 14,41 (in thousands) were given, the year taken being 1928-29. The rest of the loans are met by money-lenders. Both the money-lenders and loan offices do not inquire into the purpose of loans and they make advances for unproductive purposes. We have seen that the Bengal ryots are improvident and extravagant, and cheap and facile credit is a curse with them. Cheap credit is a blessing to those who have knowledge of the borrowing capacity and strength of character to limit their borrowing and are competent to apply the loans for productive purposes. But cheap credit is a dangerous thing with those who do not know the proper use of loans. The Bengal ryots, it has been seen, have surplus, however poor, but due to absence of thrift and want of character, they waste their surplus and recklessly go to borrow for unproductive purposes. Their improvidence compels them not only to borrow but also to default in payment of their instalments which would go to amortise the debt—that is the most grievous wrong unto oneself and unto the community. With them cheap credit would be a curse. "Education and the development of character are the sole specifics against both the wiles of the lender and the recklessness of the borrower. No legislation,

however wise or sympathetic, can save from himself the cultivator, who through ignorance or improvidence, is determined to work his own ruin."¹

The money-lenders function as important credit agencies and their high rates of interest and fraudulent practices are well-known. Accordingly the Bengal Provincial Banking Enquiry Committee voted for compulsory registration of money-lenders, fixing the maximum rate of interest, who should keep the accounts in a standard form, which would be occasionally inspected by Government, should grant receipts on counterfoils for all payments made and should furnish a copy of the account to individual borrowers, whenever demanded. The Central Banking Enquiry Committee voted against registration of money-lenders holding the view that real solution can only be found by the spread of education, the extension of co-operative and joint stock banking, training of borrowers in habits of thrift and saving, utilisation of the Usurious Loans Act and enactment of the provisions on the lines of the Punjab Regulation of Accounts Act. The Committee also favoured the idea to form co-operative societies of money-lenders which should lend to the primary societies and not to individuals or that the money-lenders may be induced to join co-operative societies. Thus we find that the Bengal ryots need the rigour of co-operative loans but at the same time it is to be noted that the resources of the co-operative societies are inadequate. The Bengal ryots should be given loans at the co-operative rate of interest for making agricultural improvements and for redemption of old debts, contracted at exorbitant rates of interest from money-lenders. Under the Land Improvement Loans Act of 1883, no loans can be advanced by Government for the redemption of old debts and consolidation of holdings—the two essential

1. The report of Royal Commission on Agriculture in India, P. 419.

pre-requisites for agricultural improvement. Therefore, the real problem in Bengal is to set up an organisation for distributing long-term capital for agricultural enterprise. Various schemes are before the country, viz.,—

(1) Government should pursue a policy of debt conciliation on a voluntary basis. Special officers would be appointed whose function would be by propaganda to persuade the lender and the borrower to agree to redemption of standing debt on the basis of a cash payment or equated payments spread over a number of years. This scheme is recommended by the Central Banking Committee, page 65-66.

(2) According to the Royal Commission on agriculture in India, the case for a Rural Insolvency Act has gathered force. "Just as creditors have the right to insist that all the debtor's assets should be impounded and applied towards the payment of the debts so also the debtor who has given up all his assets should have the clear right to be allowed to earn his living if he can and to be free to make a new start in life."

(3) The re-organisation of the loan offices of Bengal by a Special Act, embodying provisions such as minimum subscribed capital of Rs. 50,000 and a minimum paid-up capital of Rs. 25,000, no advances by loan office against its own shares, 25 p.c. of profits to be taken to the reserve fund until it equals the paid up share capital, judicious investment of reserve funds such as opening of post office savings bank accounts etc. In the reorganisation of the loan offices of Bengal, there is a proposal for a financing corporation as a sort of apex institution, which may be floated with an initial paid-up capital of, say, Rs. 5 lakhs, contributed mainly by the loan offices themselves and with debentures of twenty times the amount of capital on the security of the loan office. (For the scheme, vide Report of the Central Banking Enquiry Committee, page 201-206).

(4) There is the scheme of land mortgage through guarantors, as advocated by Manu Subedar in the Minority Report of the Central Banking Enquiry Committee. A class of guarantors from among the bigger Mahajans should be created. The scheme is this :—the bank lends out against the security of land; this security is valued by a government valuer and the value is checked or approved of by the guarantor. Of this value, from 40 to 60 p.c. could be loaned against a mortgage document; the document would be between the bank and the borrower and would remain in possession of the bank, the document providing for equated instalments, covering interest and the repayment of capital, on the basis of 5 year to 20 year return but the arrangement to be approved by the guarantor; the guarantor would guarantee to the bank the repayment of the debt (For the scheme, vide the Minority Report of the Central Banking Enquiry Committee, page 68-75).

(5) State-owned and state-managed land mortgage institutions¹ are unsuitable for Bengal, as stated by the Provincial Banking Enquiry Committee, fearing that they would be no better than a reproduction in a glorified form of the present organisation for granting land improvement loans.

(6) Commercial land mortgage banks on joint-stock-basis² or on the model of the English Land Mortgage

1. For instance, the State Savings Banks in New South Wales, Victoria and South Australia have land-mortgage department and also the State bank of New Zealand.

2. For instance, the "credit foncier de France" and the Hypothec Bank of Japan. The "Credit foncier de France" acts as an apex bank for regional mortgage banks, advancing sums repayable in 25 years at low rate of interest; it enjoys certain legal privileges and is supervised by the Government. A similar bank, called the Land Mortgage Bank of India Ltd., with a sub-title of "Credit Foncier Indien" was registered in London in 1863. It had a subscribed

Corporation¹ may be established to satisfy the credit requirements of the classes of agriculturists who are out-side co-operative movement and to provide substantial loans to big landlords.²

(7) The scheme of co-operative land-mortgage banks, as framed by the Central Banking Enquiry Committee, is this :— the loans should be devoted to the following principal objects—

- (a) the redemption of land and houses of agriculturists and the liquidation of debts,
- (b) the improvement of land and methods of cultivation and the building of the houses of agriculturists,
- (c) the purchase of land in special cases.

capital of £2,000,000 granting loans on the mortgage of land property in India; the period was generally for 7 years and the interest varied from 8 to 10 p.c. The bank did not exist for more than 25 years.

1. The English Mortgage Corporation was set up by the Agricultural Credits Act of 1928 and the leading Joint-Stock banks of England are the share-holding banks in this corporation. The Ministry of Agriculture is authorised to advance upto an amount not exceeding £750,000 for the purpose of establishing a guarantee Fund. These advances are free of interest for a period of 60 years. The advances by the corporation on agricultural mortgages must not exceed two-thirds of the estimated value of the property and must be repayable by equal yearly or half-yearly instalments of principal and interests spread over a period not exceeding 60 years, the mortgage advance being thus automatically reduced.

2. The Central Banking Enquiry Committee have pointed out the need for commercial land mortgage banks especially in provinces where the Permanent Settlement prevails. In absence of any such mortgage institution land is deprived of its proper credit value and it becomes difficult to raise funds for utilisation in productive channels connected either with the development of the estates or with other lucrative industry and trade. Dawson's Bank in Burma is a commercial agricultural bank, operating in the Irrawaddy delta (for the working of this bank, vide paragraph 422 of the Agricultural Commission's Report).

The amount of loans should not exceed Rs. 5,000; it should not also exceed 50 p.c. of the value of the mortgage security; the period of loan should not exceed 20 years. For repayment of loans, there should be a system of equated payments, and a system of graduated payments may also be adopted. The working capital of the mortgage bank should be derived from share-capital and debentures; the interest on debentures is to be guaranteed by Government. The debentures should be issued by the Provincial land mortgage corporation. Land mortgage banks should not receive deposits ordinarily like co-operative Central banks. The Committee vote for the institution of a provident fund scheme in land mortgage banks under which the borrower will be required to contribute annually a fixed sum to the provident fund on the basis of his ordinary surplus in a normal year and the instalment for repayment of loans which he might be paying to the land mortgage bank. The power of foreclosure and sale by the land mortgage bank without recourse to civil courts should be given to the bank.

The Bengal Provincial Banking Enquiry Committee recommended that land mortgage banks of the co-operative type¹ would be suitable for the province and their success can be assured by grafting them on to the existing Co-operative Central banks.²

1. The 'Landschaft' for small land-holders in Germany on co-operative basis was started in 1770 and had since been introduced into the Baltic states, Poland, Norway, Denmark, Hungary and Russia. The Bengal Provincial Enquiry Committee in their recommendation take their inspiration from the Central co-operative Bank of Louvain founded in 1897; this bank has a land section, financed by bonds, which lends to farmers on real estate mortgages through primary credit societies, affiliated to the bank and also directly to individual borrowers from places where there is no primary credit society.

2. 'We are convinced that the two classes of societies, Co-operative Society and land-mortgage society, should work entirely

It is clear that there must be improved finance for the sake of improved agriculture but the task is not easy and the nation's energies should be directed towards achieving the desired object. But in dealing with the financing of agriculture, the following factors, peculiar to our province, should be taken into consideration:—

(1) The Bengal ryots are not essentially insolvent but improvident and extravagant and the prime need is to inculcate in them habits of thrift and saving.

(2) Due to smallness and fragmentation of holdings, methods of large-scale capitalistic farming are not likely to be adopted and there can be no immediate demand for long-term credit on an extensive scale for costly and elaborate agricultural machinery; long-term is essential only for liquidation of past debts, contracted on exorbitant rates of interest.

(3) The demand of landlords for large agricultural improvements is limited because of tenancy legislation; the

apart and that the transactions of the ordinary society should not in any way be mixed up with those of the mortgage bank"—Central Banking Enquiry Committee. Mr. Calvert objects to the confusing of local credit societies with mortgage banks as they are entirely separate institutions with different objects and catering for distinct classes of members.

"You can have no linking up of mortgage credit institutions and personal credit institutions for the purpose"—Wolff.

Mr. Strickland advocates a separate mortgage institution, distinct from the society of short credit, otherwise it will "lock up the funds of the tiny community for a dangerously long-term to the detriment of the general body of members."

The existing land mortgage banks in Bengal, Naogaon Co-operative Land Mortgage Bank and Dakhinsahabazpur land mortgage bank at Bhola, are limited liability institutions, registered under the Co-operative Societies Act of 1912.

landlords require loans¹ only for freeing the encumbered estates and clearing off ancestral debts and also for buying out co-sharers' property, should occasion arise. By buying out co-sharers' properties, the evils of "absentee-landlordism" can be countered to a considerable extent.

(4) "The estates in Bengal represent large investments of capital which are not employed in other directions owing to the security of the yield obtained from investments in land under the Permanent Settlement and the absence of a similar security of return from investments in the fields of industry and commerce."

(5) The occupancy ryot in Bengal is for all practical purposes the proprietor of his holding subject to (1) the existing rent charge, (2) the liability to an enhancement of rent, (3) the premium payable on the transfer of his holding.

(6) The productivity of land has a limit and the law of diminishing return operates in the land much more quickly. Moreover, Jute is an exhausting crop.

In Bengal five land-mortgage banks are recommended by the Government to supply long-term credit to substantial cultivators, small landowners and rent-receivers for the purpose of—

- (a) redemption of mortgages in lands and liquidation of other debts,
- (b) improvement of land and method of cultivation, and
- (c) purchase of land in special cases on condition that such purchase will enable the ryot to round off his holding and work it more economically.

1. "Although a man who contracts debts and hopelessly encumbers his estates is not entitled to much consideration, it is otherwise with his successor who had nothing to do with incurring the debts"—Dupernex "People's Banks for Northern India."

It will be an 'ad hoc' organisation but will work in close co-operation with the existing Central Co-operative Bank in the area.

The capital of a land-mortgage bank will be raised by sale of shares to members, whose liability will be limited to the nominal value of their shares of the net profits earned by the Bank, 75 per cent will have to be carried to the reserve fund, the remaining 25 per cent being available for distribution as dividend, bonus etc.

The interest of the debentures will be guaranteed by Government during their continuance, the guarantee of interest being limited to debentures of a total value not exceeding Rs. 12½ lakhs.

Loan will be granted to a member up to 20 times the paid-up value of shares held by a member subject to a maximum of Rs. 2500 which in special cases may be extended upto Rs. 5000 with the sanction of the Registrar of Co-operative Societies. No loan will be granted exceeding 50 p.c. of the market value of the land hypothecated and 75 p.c. of the total income derived from the land during the period of loan. No loan will be granted to a member who from his agricultural income is unable to pay the interest and instalment of the principal keeping sufficient margin for his maintenance.

To give the scheme a start, Government made a provision for Rs. 40,000 in 1934 to cover the cost of establishment and other charges. Government will bear the entire cost of management in the first year; in the second and third years Government will bear the difference between the gross profits and the management charges in the event of the latter being greater than the former. After the third year, Government will have no liability for management.

In the Reserve Bank of India Act, 1934, there is a provision for a special Agricultural Credit Department, the function of which shall be—

- (a) to maintain an expert staff to study all questions of agricultural credit and be available for consultation by the Governor-General-in-Council, Local Governments, provincial Co-operative banks and other banking organisations.
- (b) to co-ordinate the operations of the Bank in connection with agricultural credit and its relations with the provincial co-operative banks and any other banks or organisations engaged in the business of agricultural credit.

It follows in principle the Commonwealth Bank of Australia Act.

The Reserve Bank of India Act further states that the Bank shall, at the earliest practicable date and in case within three years make to the Governor-General-in-Council a report, with proposal, if it thinks fit, on, amongst others, the improvement of the machinery for dealing with agricultural finance and methods for effecting a closer connection between agricultural enterprise and the operations of the Bank.

It is said that agricultural indebtedness is estimated by the Provincial Banking Enquiry Committee at Rs. 100 crores. In responsible circles, it is considered as an under-estimate. I glean the following statistical information from Prof. P. C. Mahalanobis' calculations :

“In each of the 6 districts (viz. Pabna, Bogra, Burdwan, Birbhum, Bankura and Faridpore) for which figures are ready, from 52 to 25 per cent of the total agricultural families are in debt less than twice, their present depression period income. 14 to 22 per cent are in debt between 2 and

4 years' income. Except in Burdwan and perhaps other districts about 12 p.c. of the families surely have less than 2 acres of land, 12 p.c. between 2 and 4 acres, 10 per cent between 4 and 8, 6 per cent over 8 acres. During the period of economic crisis, (that is since 1929), the income of agriculturists has come down by 50 per cent and expenditure has also decreased by 40 per cent."

Agricultural indebtedness in Bengal is estimated by some at Rs. 210 crores.¹ There is an interesting statistical analysis whereby this huge figure is arrived at. The 40 p.c. of debt is secured by bond or land mortgage, of which 25 p.c. of debt is secured by land mortgage only. The average period for which mortgage debts run is 6 years. 30 per cent of agriculturist families is free from debt. The total debt secured by land mortgage at the end of the year 1928 was Rs. 73 crores. Subtracting 20 crores which is the total debt of landlords secured by mortgage, we get Rs. 53 crores as the total of agriculturists' debts secured by mortgage. The total number of persons depending on agriculture is 88 lacs multiplied by 5, that is 4.48 crores. The average debt secured by mortgage on land is (Rs. 53 crores divided by 4.48 crores) Rs. 11.8 per head. Multiplying Rs. 11.8 by 5.1, we get at Rs. 60 as the average debt secured by mortgage per family. If 25 per cent is secured debt, we multiply Rs. 60 by 4 and we get Rs. 240 as the debt per family. If we multiply Rs. 240 by 88 lacs we get roughly Rs. 210 crores as the agricultural debt for the whole province.

It is also said that agricultural indebtedness is a sign of prosperity. In a sense it is true. Indebtedness is an indication of one's credit and credit in its turn shows the economic worth of his assets. In Bengal, the ryots are heavily indebted but they are not insolvent.

1. An article in the August issue (1934) of "Sankhya" (The Indian Journal of Statistics).

If there is a further aggravation of the situation without any hope of speedy recovery or redemption, the possibility of the recurrence of a famine is not fantastically remote. It is time that our attention should be diverted towards the alleviation of the sufferings of the people, dependant on land. It would be a valuable contribution to social well-being if the landlords and tenants could be lifted out of the pits of insolvency. The landlords run into debts because the tenants make default; the tenants make default because they have no money to pay. This vicious process of distintegration can be stopped by making agriculture a paying industry.

To remedy such a hopeless state of affairs, Debt Conciliation Boards are proposed to be set up in every union to adjust past debts and to arrange for their payment by easy instalments. The Boards thus far from creating helpful conditions for future debts, would block all the avenues of borrowing by getting the assets of cultivators mortgaged to the Board for punctual payment of the awarded debts. This arrangement can only be arrived at on the hypothesis that the cultivators who should get their debts adjusted by the Boards would require no loans in future; they could meet all demands on the produce-value of their lands. That is a hypothesis which cannot be said to recognise the realities of the situation.

Land is the prime factor for consideration and the gravest problem is that the holdings of the agriculturists are getting un-economic. The tenancy legislation as it exists to-day causes and encourages the deterioration of holdings. By making occupancy ryots *de facto* proprietors and occupancy tenures transferable, their lands have attracted large investments by way of debts from Mahajans: debts, thus outstripping the produce value of lands, have unfortunately destroyed the balance with the regrettable result that the ryots entangled in the octopus of debts could never

disentangle themselves. If occupancy tenures were made transferable only to the genuine cultivators, the situation would have shaped differently and in a better way. The process of degeneration of the agriculturists is comfortably smooth: a money-lender gives loans to an occupancy ryot and subsequently buys the agricultural holding of the ryot and settles him as an under-ryot or burgadar at a higher rent, the money-lender enjoying all the rights and privileges of an occupancy ryot.

On the question of the transferability of occupancy tenures, it would be interesting to recall the wise words of the Hon'ble Mr. Justice Field:

"It must not be supposed that legislation, which merely adjusts the relations between the Zemindars and the ryots will be a final solution of the difficulties which exist in these provinces. The Bengali or Behari ryot is a very different individual from the enfranchised serf of modern Europe. He is inclined to sloth, wanting in thrift and self-reliance, careful only of the present and regardless of the future. Let no one indulge the delusion that an Act, even of the Legislative Council of India, will convert him into a French, or Prussian, or Belgian peasant, industrious, frugal, provident. Even when the ryot is protected from oppression, there is the danger that he will convert himself into a petty landlord and an oppressor of the worst kind. This danger is greater in the East than in the West. In Bombay, where the raiyatwari system was introduced from the commencement, it was found necessary to protect the under-tenants. In a despatch of 1879 from the Secretary of State it is said:—
"There is undeniable evidence in the Report before us that the very improvements introduced under our rules, such as fixity of tenure and lowering of the assessments, have been the principal causes of the great destitution which the Commissioners found to exist. The saleable value of the land

increased the credit of the ryot, and encouraged beyond measure the national habit of borrowing and more expensive modes of living." The Famine Commission say in their Report that it is commonly observed that the landholders are more indebted than tenants with occupancy-rights, and tenants with rights than tenants-at-will; and they observe upon the popular tendency to indebtedness, having acquired in the Deccan increased power from "the fatal gift of transferable rights in the soil."

"Let the ryot in the provinces under the Bengal Government be protected from oppression and exaction: let the demand of rent upon him be moderate, and above all things certain: let the enjoyment of any higher rights, which he may acquire by his industry, be secured to him, but let him be made to understand that he may not convert his liberty into license: that the protection and security which are given to him, depend upon his faithful discharge of his liabilities, the punctual payment of his rent: and that Government, while willing to maintain him safe in the enjoyment of the gains of honest labour, the profits of patient industry, has no intention that he shall become an idle middleman, a petty landlord and narrow-minded oppressor of Kurfa sub-tenants."

The law relating to usury and interest in Bengal is now governed by the Bengal Money Lenders' Act of 1933. The Usurious Loans Act of 1918 failed to achieve the purpose. The list of money-lenders' usual rates, as given by the Bengal Provincial Banking Enquiry Committee, is as follows:

Districts			Per cent per annum
Burdwan	...	...	24 to 175
Birbhum	...	...	15 to 37½
Bankura	...	...	15 to 25
Midnapur	...	...	12 to 75
Hooghly	...	..	12 to 37½

Districts		Per cent per annum
Nadia	...	37½ to 75
Jessore	...	18½ to 75
Khulna	...	25 to 37½
Murshidabad	...	18 to 120
24 Parganas	...	15 to 150
Dacca	...	12 to 192
Mymensingh	...	24 to 225
Bakarganj	..	24 to 100
Faridpur	...	15 to 150
Chittagong	...	15 to 75
Noakhali	...	24 to 75
Tipperra	...	24 to 75
Rajshahi	...	18½ to 75
Pabna	...	37½ to 300
Dinajpur	...	24 to 75
Rangpur	...	37½ to 66½
Malda	...	10½ to 75
Jalpaiguri	...	10 to 50
Darjeeling	...	30 to 60
Howrah	...	12 to 175

In Bengal, adequate credit institutions are not available to the ryots, so the institution of Mahajan is a necessary evil. The Mahajans under the existing circumstances cannot be done away with. The Bengal Moneylenders' Act of 1933 specifically provides :

“Where in any suit in respect of any money lent by a money-lender after the commencement of the Usurious Loans Act, 1918, it is found that the interest charged exceeds the rate of fifteen per cent per annum in the case of a secured loan or twenty-five per cent per annum in the case of an unsecured loan or that there is a stipulation for rests at intervals of less than six months, the Court shall, until the contrary is proved, presume for the purpose of Section 3 of the Usurious Loans Act, 1918¹ that the interest charged is

¹ The Usurious Loans Act did not define what was excessive interest. The financial conditions of the debtor, the nature of the

excessive and that the transaction was harsh and unconscionable and was substantially unfair but this provision shall be without prejudice to the powers of the Court under the said section where the Court is satisfied that the interest charged, though not exceeding fifteen per cent per annum or twenty-five per cent per annum as the case may be, is excessive."

The Act, if availed of by the debtors, would place a definite check on usury and in certain quarters it is apprehended that the Act may help the contraction of credit money which in the long run would adversely affect the needy ryots.

Economic Structure

To understand the implications of the economic structure of rural Bengal, the following statistical information should be appreciated :

The mean density of population per square mile is 618 in the Burdwan Division, 566 in the Presidency Division, 557 in the Rajshahi Division, 935 in the Dacca Division, 584 in the Chittagong Division. The percentage of the cultivable and the cultivated area (to the total area) is 78·3 and 47·5 in the Burdwan Division, 56·7 and 31·6 in the Presidency Division, 80·0 and 50·9 in the Rajshahi Division, 79·6 and 71·1 in the Dacca Division and 59·3 and 37·0 in the Chittagong Division. The percentage of the cultivated area to the cultivable area is 60·7 in the Burdwan Division, 55·7 in the Presidency

security, the risk incurred by the creditor, the extra amounts not paid but incorporated in the principal as expenses, in the case of compound interest the periods of the rests, the total advantage of the respective form of the transaction—all these points to be taken into account in determining what is excessive interest.

Division, 63·6 in the Rajshahi Division, 89·3 in the Dacca Division and 62·5 in the Chittagong Division. The percentage of the gross cultivated area which is irrigated is 14·2 in the Burdwan Division, 2·0 in the Presidency Division, 2·6 in the Rajshahi Division, 0·6 in the Dacca Division and 0·4 in the Chittagong Division.

In the whole of the province there are 25 persons following an agricultural occupation for everyone employed in Government service or in professions and liberal arts. The great majority of agriculturists are engaged in ordinary cultivation which finds employment for 9,477,076 persons as well as providing a subsidiary means of livelihood for 674, 718 more. More than one half of these are cultivating owners, for every two of whom there is one agricultural labourer. The figures for cultivating tenants are less than one-sixth those of cultivating owners and there is only one landlord for more than 10 cultivating owners.

Number of cultivators per 100 landlords
and their agents.

Bengal	1,297
Burdwan Division	1,115
Presidency Division	1,102
Rajshahi Division	1,644
Dacca Division	1,190
Chittagong Division	1,584

The calculated income derived by the cultivator from Jute is shown in the following table :

Average of the Annual Payment.
Lakhs of Rupees.

5 years ending 1909	...	24,96·61
5 „ „ 1914	...	31,70·68
5 „ „ 1919	...	31,28·81
5 „ „ 1924	...	33,49·11
5 „ „ 1929	...	56,96·62

The average rate of daily wages of agricultural labourers :

			1925 In annas.
Burdwan Division	...	...	9·48
Presidency „	...	...	9·75
Rajshahi „	...	...	10·89
Dacca „	...	...	12·51
Chittagong „	...	...	10·69

In the Census Report, 1931, there is an interesting discussion that Bengal can support a larger population with the existing standard of living. Only 67 p. c. of the cultivable area is under cultivation. Improved methods and intensive farming would increase 30 p. c. over the present yield.

Figures for 1933-34 in Bengal:—

Forests—4,607,440 acres ;
 Not available for cultivation—8,920,219 acres ;
 Culturable waste, other than fallow—6,255,188 acres ;
 Current fallows—4,763,330 acres ;
 Net area cropped—24,002,400 acres ;
 Total area—48,548,577 acres ;
 Area under bhadoi crops—8,828,200 acres ;
 Area under aghani crops—15,808,900 acres ;
 Area under rabi crops—3,938,800 acres ;
 Total cropped arrea—28,575,900 acres ;
 Area cropped more than once—4,573,500 acres.

The area under crops:—

Total Rice—21,672,500 acres

- (a) Bhadoi or Aus—harvested from mid-June to mid-November—5,775,300 acres
- (b) Aman or winter—harvested from mid-November to end of February—15,498,700 acres
- (c) Boro or Summer—harvested from 1st March to mid-June—398,500 acres.

Total food grains (including Wheat, Barley, Maize, Gram etc.)—23,180,100 acres.

Total oilseed (including linseed, til, rape & mustard etc.)—132,700 acres.

Total Sugar crops—310,200 acres
 Condiments and Spices—132,700 acres
 Cotton—58,000 acres.
 Jute—2,142,300 acres.
 Other Fibres—42,300 acres.
 Tea—199,900 acres.
 Tobacco—285,700 acres.
 Cinchona—3,100 acres.
 Indian hemp—400 acres.
 Other drugs—700 acres.
 Fodder crops—100,200 acres.
 Fruits and Vegetables—767,200 acres.

Normal rates of yield per acre of different crops:—

Winter rice—13½ Maunds ;
 Bhadoi rice—12½ Maunds ;
 Summer rice—15 Maunds ;
 Wheat—10 Maunds ;
 Barley—10½ Maunds ;
 Gram—11 3/8 Maunds ;
 Lentils—10½ Maunds ;
 Khesari dal—10½ Maunds ;
 Mug—10½ Maunds ;
 Linseed—7 3/8 Maunds ;
 Rape and Mustard—7 3/5 Maunds ;
 Til—7 2/5 Maunds ;
 Sugarcane—56 2/5 Maunds of gur ;
 Jute—17 4/5 Maunds or 3·7 Bales of 400 lbs.
 Number of Estates paying Land Revenue—101, 776
 Permanently Settled estates—94,005
 Temporarily Settled estates—4,325
 Estates under direct Management—3,446
 Current Demand of Permanently Settled estates—Rs. 2,15,31,443
 Current Demand of Khasmahal estates—Rs. 66,09,714
 Number of estates—1,01,776
 Area in Square miles—68656·5562
 Current Demand—Rs. 3,07,91,739
 Current collection—Rs. 2,28,42,124

Number of permanently settled estates—94,005
 Area in square miles—58663·6848
 Current Demand—Rs. 2,15,31,443
 Current Collections—Rs. 1,89,64,989

It must be noted that the profits are shown on the assumption that all labour, human and cattle, is paid and hired. The ordinary peasant does not expend so much—so the average cost of production would come down considerably.

To find out the average income of the cultivator, we must know the value of crops produced in the province and to know it is to know the area and yield of the principal crops. The following are the statistical information for Bengal in 1928-29¹:—

Crop	Area cropped in acres	Total yield in maunds	Harvest price per		Price of produce
			maund Rs. As.		
					Rs.
Rice	21,403,000	271,152,000	6	10	179,63,82,000
Wheat	123,000	896,000	6	0	53,76,000
Barley	82,000	728,000	9	9	25,93,500
Jowar	4,000	28,000	3	0	84,000
Bajra	2,000	28,000	3	0	84,000
Maize	94,000	868,000	3	0	26,04,000
Gram	143,000	1,176,009	5	8	64,68,000
Sugarcane	196,000	6,088,000	8	9	5,17,86,000
Cotton	79,000	90,003	33	0	29,70,000
Jute	2,917,000	43,300,000	9	0	38,98,00,000
Linseed	132,000	532,000	8	0	42,56,000
Rape and					
Mustard seed	700,000	3,444,000	8	12	3,01,35,000
Sesamum	153,000	644,000	9	0	57,96,000
Tobacco	291,000	3,416,000	20	0	6,83,20,000
Other crops	2,383,700	at say Rs.	30	p. acre.	7,15,11,000
Total	28,702,700	...	...		243,80,65,500

If we divide the total value of crops produced (Rs. 2,438 millions) by the number of cultivating families (6 millions, each family consisting of 5 members), we get at the average income of the agricultural family which stands at

1. Taken from Estimates of Area and Yield of the Principal crops in India in 1928-29.

Rs. 406 per family or Rs. 79 per head of the cultivating class. The Bengal Provincial Banking Enquiry Committee have calculated Rs. 44 as the average annual income of an agricultural family from subsidiary occupations.¹ Thus the income amounts to Rs. 450 a year. The Committee have also estimated the expenditure of an agricultural family to be Rs. 420 a year. This gives a surplus of Rs. 30 per family or Rs. 6 per head. The estimate of the average expenditure per family is at once interesting and instructive. It is estimated as follows :—

			Rs.	A.
Implements	...	...	3	10
Cattle	...	..	12	0
Seed	...	...	13	0
Manure	...	...	0	0
Labour	...	...	40	8
Total				69 2
Rents, Cesses and Rates—				
Rent	...	...	25	0
Cesses	...	...	0	12
Commission	...	...	1	9
Rates	...	...	1	1
Total				28 6
Food	...	...	...	225 0
Clothing	...	...	...	35 0
Miscellaneous:—				
Lighting	...	...	5	12
Tobacco and Betel	...	...	7	12
Repairs and renewals	...	...	12	0
Social and religious ceremonies	...	...	15	0
Miscellaneous including education, amusements, entertainment of relations or visitors	...	...	22	0
Total				62 8
Grand Total				420 0

1. Subsidiary occupations :—Sale of cocoanuts, betelnuts and other fruits ; sericulture and cultivation of lac in Malda, Rajshahi, Birbham and Murshidabad ; poultry farming and sale of eggs by Mahammadan cultivators nearly in every district but principally in Noakhali and Chittagong ; sale of milk and vegetables ; rearing of goats and sheep ; working as a boatman in Northern and Eastern Bengal.

The rents, cesses and rates require some explanation. The average rent of agricultural land, as calculated by the said Committee, is Rs. 4-13 per acre. The average rent of a holding of 5·2 acres is Rs. 25. The cesses at half anna per rupee will be 12 annas. There is commission paid to the landlord's agent at 1 anna per rupee. The total amount of union rates realised is Rs. 42,50,273 from the Union Board population of 19,856,117. This works at Re. 1-1 for a family of five persons. The Choukidari tax approximates the union rate.

Thus we find that the profits of cultivation are not hopelessly disappointing which can also be gauged from the value of land in agricultural holdings. On enquiry it has been found that the average prices per acre of ordinary land bearing winter rice are Rs. 328 in Birbhum, Rs. 98 in Nadia, Rs. 369 in Bogra, Rs. 314 in Mymensingh, and Rs. 1,008 in Chandpur. The Bengal Provincial Banking Enquiry Committee estimated the average value of an acre of agricultural land in the province to be Rs. 300. We have also found that the rent is not very high, or at least sufficiently low to fetch some surplus, however poor, for the cultivator.

Circumstanced as the cultivators are, we find from the economics of land-system that the unearned increment from land entirely goes to the ryot. Paradoxical as it may seem, the flourishing of ryots on an unearned income is a common and natural phenomenon. Whenever there is a rise in the price of agricultural commodities, the benefits entirely go to the ryots. Prices increase with the increase of population or with the increase of export trade. The increase in the producer's surplus may be not simply in the form of money but in that of produce itself. That is the unearned increment from land. The increase of the money equivalent of the producer's surplus is brought about in two ways: there may be increase of prices which means that the same amount of surplus represents a larger sum of

money. In this case it may be urged that under section 30 of the Bengal Tenancy Act, the landlord is entitled to a share¹ but that is also hedged round with so many conditions which are extremely hard to prove, that the section is hardly availed of. The money equivalent of the producer's surplus does also increase when there is an increase in the volume of the surplus. In this latter case, the surplus is exclusively enjoyed by the ryots and the landlords cannot claim any portion thereof. In times of depression, the people come forward and throw flings at the landlords for the fancied crime of the realisation of their due and legitimate rents but no one remembers that in times of prosperity, the landlords do not gain a whit beyond their legitimate rents. Whenever there is a year of agricultural prosperity in the province, it must be understood that that is a year of prosperity for the ryots. And it is well-known that the prosperous years outnumber the depressing ones.

Agricultural Holdings—Smallness and Fragmentation

The size of the raiyati holding in Bengal is extremely small. The following table, based on the figures from the Settlement Reports, will show the size of the business unit in agriculture.²

1. "In the case of rise of prices, the increase in rent that is allowed by the Act (Bengal Tenancy) merely represents the increased money value of the same amount of produce rent. The landlord does not even obtain the full compensation that is necessary for the rise in prices, on account of the one-third deduction (which is intended to cover the rise in the cost of production) and in terms of produce, he receives actually less than what he did before the rise in prices."

2. It is interesting to note the size of the average agricultural holding in foreign countries as given below :—

				Average size of holding.
Country				Acres
Germany	...	...	...	22.0
Germany	...	...	...	21.5
France	...	...	...	20.25
Denmark	...	...	...	40.0
Belgium	...	...	...	14.5
Holland	...	...	...	26.0
U. S. A.	...	...	...	148.0
Japan	...	...	...	3.0
China	..	..	..	3.25

District.				Size of average ryoti holding
				Acres
Bankura	...	...	...	1·86
Midnapore	...	...	...	1·29
Jessore	...	...	...	1·78
Backerganj	...	...	...	2·51
Faridpur	...	...	...	1·39
Dacca	...	...	...	1·52
Mymensingh	...	...	...	2·67
Rajshahi	...	...	...	2·20
Noakhali	...	...	...	2·30
Tippera	...	...	...	1·90

The average for the 10 districts comes to 1·94 acres. On an average a ryot can have not more than two tenancies—thus he may have 3·88 acres.

Small holdings are unsuitable in Bengal from the standpoint of economics of production. Bengal is not a land fit for small holdings as Belgium is. In the production of corn, the large farm has decided advantages over the small. The staple crop in Bengal is rice. Out of the total net cultivated area of about 28 million acres, nearly 21 million acres are for rice. The other important crops are jute, sugar-cane, pulses etc. In the cultivation of these, large farming is economical and advantageous. Fruit and vegetable growing, stock breeding, dairying etc. need small farming but in Bengal they are of little significance. Small holdings also involve economic wastages. A pair of bullocks, it has been found, is ordinarily sufficient for the cultivation of about 5 acres of land, when the crop produced is mainly rice. It has further been found that the number of animals per acre, required for ploughing, diminishes upto a certain stage as the size of the compact holding increases. Small holdings are also unsuitable for labour-saving machineries.

The smallness of holdings is a curse in Bengal and it is facilitated by the growth of population and the law of inheritance. The more people there would be, the more would be heirs. And through the grace of the law of succession the process of sub-division goes on and the holdings diminish in size with the progress of time.

Fragmentation of holdings is another vice. The holding in Bengal does not consist of a single compact block of land.¹ Sometimes a ryot holds different strips of land, even two or three miles apart from one another. Fragmentation of holdings perpetuates the vices of small holdings beyond redemption. The increase of population, lack of a corresponding expansion of industry, the dissolution of the joint family and the growth of the individualistic spirit—all these, assisted by the laws of inheritance and succession, are the main causes of excessive sub-division and fragmentation.

The evils of fragmentation are many: it involves a greater expenditure of capital and a smaller return than if the same area is in one compact block. "It is calculated that expenditure of cultivation increases by 5·3 per cent for every 500 metres of distance for manual labour and ploughing; 32 p. c. to 35 p. c. for transport of manure; and from 15 to 32 p. c. for transport of crops." It impedes cultivation; it entails wastage of time and labour and cattle-power. "This destroys enterprise, results in an enormous wastage of labour, leads to a very large loss of

1. Fragmentation has been brought about to such an extent that the Settlement Report of Dacca records the average size of plots as ·55 acre in Kapasia thana. Dr. R. K. Mukherjee in his *Rural Economy of India* says that in a certain Murshidabad village, the average plot is 10 cottas i.e., ·20 acre.

land owing to boundaries, makes it impossible to cultivate holdings as intensively as would otherwise be possible and prevents the possibility of introducing outsiders, with more money, as tenant farmers or as purchasers of a good agricultural property."

All these evils bring forward the question—what is an economic holding. By economic holding, we mean "a holding which allows a man a chance of producing sufficient to support himself and his family in reasonable comfort after paying his necessary expenses." An economic holding will vary according to a number of factors, such as, elasticity of capital, nature of the methods of agricultural production, extensive or intensive cultivation, quality of the soil, presence or absence of irrigational facilities, the crops raised etc. Moreover, it must be borne in mind that the unit of economic life in India is the family and not the individual. Whatever be an economic holding, a speculative question which does not concern us at this stage, the Bengal ryot has scarcely 3·1 acres in his cultivation. But "the very rights which the cultivator has in his land and which have been secured for him by special tenancy legislation make the cultivator stick like a limpet to his petty holding and prevent him from going in search of work in industrial centres except in the last extremity."

Defects in Agricultural Labour, Equipment and Organisation

The man behind the plough is the most important factor in the improvement of agriculture. The human factor is very important. "Defects in character can and will nullify the richest gifts of nature, while what may appear to be insuperable difficulties are apt to disappear before the sustained application of human energy, human intelligence

and human knowledge." As things stand at present, it must be admitted that the cultivators of Bengal lack in originality and initiative and are wedded to traditional methods and practices, "many of which are wasteful and unscientific." They are illiterate, steeped upto the lips in superstitions and prejudices. The deadweight of inertia, apathy and conservatism stand in the way of reform; the insanitary habits of living, bringing about avoidable physical sufferings, decimate their vitality and capacity; they are improvident and reckless; they waste substance and energy in needless litigation.

Malaria, a wasting but an avoidable disease, works havoc in Bengal villages. The insanitary and unscientific habits of living are responsible for other major diseases such as cholera. These diseases reduce the economic power of the cultivating classes. They debilitate and incapacitate the worker. A weak, diseased man naturally becomes lethargic, listless and fatalistic.

As regards the technique and equipment, the Bengal agriculturist is extremely backward. The holdings are small but the method of cultivation adopted is extensive—that is unscientific. Intensive and thorough cultivation is more economical in Bengal. In Japan and China, the cultivation is intensive. Japan maintains normally a population of fifty-six millions on a cultivated area of seventeen millions of acre. In Bengal, 28 million acres cannot maintain a population of 30 millions, the reason being the absence of intensive method of cultivation.

But intensive method of cultivation involves more expenditure on permanent improvements and irrigation, more efficient cultivation, careful selection of seed, a better system of rotation of crops and adequate manuring. That means that the equipment must improve. Bengal is

endowed with a rich nature. The province is mostly a level plain with fertile soil, yielding a fair return to the comparatively small amount of labour spent on it. The configuration of the country, the character of the soil, the river and the mountain systems, the amount and the distribution of rainfall—all these are favourable to the Province. The province has very good natural boundaries: the three sides having important systems of hills and mountains giving rise to streams which would flow over the extensive plains. The river system is splendid; the Ganges (including the Padma), the Brahmaputra (including the Jamuna) and the Meghna with other innumerable tributaries and distributaries act as natural fertilising agent for a considerable part of the province and they further serve as drainage and irrigation channels, supply fish and provide cheap and convenient water transport. The rainfall in the province is well-distributed. The annual rainfall is above 75 inches.

With all the liberality of Nature, the part played by Man is far from satisfactory. The equipment in the cultivation is extremely defective. There is no application of manure and fertilisers in increasing the yield of the soil. In absence of the use of manure, the law of diminishing return operates in the land much more quickly.

The use of cow-dung as a fuel is a wasteful practice, it should be used as a manure and the possibilities of afforestation for increasing fuel supplies should be explored. Cattle urine should not be allowed to run to waste and the prejudice against human excreta as manure should be broken down. "In China there is no organic refuse of any kind which does not eventually find its way back to the land as manure." The village sweepings instead of being thrown away causing insanitation to all around should be conserved into pits and used for manurial treatment of the

soil. Mr. Brayne suggests the use of pits for latrines for men and women with hedges for privacy and planks across for convenience to ensure clean villages and heavy crops. The methods of employing leguminous crops for increasing soil fertility should be investigated. We find that our cultivators are extremely unmindful of manure, the absence of which reacts unfavourably on the fertility of the soil.

The implements that the cultivators use are primitive. The plough¹ consisting of a wooden frame with a pointed iron shave has grave defects: it is unsuitable for deep ploughing, stirring the soil upto a depth of 3 or 4 inches. The plough, as it is drawn over the land, makes V-shaped furrows and consequently leaves ridges of unploughed land between them; it does not eradicate the weeds, having no cutting parts. The primitive plough should be modernised. Dr. Clouston points out that the M. S. N. plough is only 34 lbs. in weight and can be drawn by a pair of bullocks.

The implements are primitive and the cattle power in Bengal is extremely low. The province is maintaining an excessive number of cattle, deplorably poor and ill-fed. The total number of cattle in the province is 25 millions of which a great number are of the bovine class, but the total area under fodder crops is only about one hundred thousand acres. There are 108 cattle per 100 acres of net sown area in Bengal. Holland which possesses the largest number of cattle in relation to the size of the country has 38 cattle per 100 acres of cultivated land. Egypt where agriculture is supposed to be backward has 25 cattle per 100 acres of cultivated land. In other provinces of India, the number of cattle per 100 acres stands as such:—Madras 66, Bombay 42, U.P. 88, Punjab 57, B. & O. 82, C. P. & Berar 47, Assam 97, Burma 37.

1. Other implements used are Yoke, Harrow, Rake, Spade, Niranis, Sickles and Hammer.

The Agricultural Commission rightly said :—"The number of cattle within a district depends upon and is regulated by the demand for the bullocks. The worse the conditions for rearing efficient cattle are, the greater the numbers kept tend to be. Cows become less fertile, and their calves become undersized and do not satisfy cultivators who, in the attempt to secure useful bullocks, breed more and more cattle. As numbers increase, or as the increase of tillage encroaches on the better grazing land, the pressure on the available supply of food leads to further poverty in cows, and a stage is reached when oxen from other provinces or male buffaloes are brought in to assist cultivation as in Bengal." There is the quantity of cattle in the province but the quality is deteriorating because there is no adequate fodder supply.¹ The problem has grown acute because, in the first instance, the fodder supply is inadequate and secondly, the economical use of fodder supply implies reduction in the number of useless cattle. The problem has a touch of tragedy when we find that there are no arrangements for efficient breeding of cattle. Every animal, however poor, is allowed to breed and perpetuate its poor qualities ; there is no selection.

The ryots suffer from another economic wastage. In 12 months, they work for a period of 3 months or 5 months at most. The rest of the time they idle away. That is a plague-spot in the life of the cultivating class of Bengal. It is

1. There is scope for the increase of the production of fodder in the province. Of the total area of about 28 million acres under cultivation, only about $4\frac{1}{2}$ million acres are double cropped. The remaining $24\frac{1}{2}$ million acres produce one crop and remain fallow for a number of months during which period a second crop either of fodder or some kind of pulses can be easily grown. It is not possible to earmark certain lands for fodder supplies only, because the pressure of cultivation on lands is very strong in Bengal.

commonly said that Bengal is a double-cropped country but only one-seventh of the area under cultivation grows only two crops. Mr. J. C. Jack in "Economic life of a Bengal District" points out that "the time-table of the cultivator...when his land is unfit for jute shows three months' hard work and 9 months' idleness ; if he grows jute as well as rice, he will have an additional six weeks' work in July and August." The ryots could improve their economic strength by taking to subsidiary occupations in their period of idleness. Some of them do take but the majority do not and they spend time in recreation, marriage and litigation. Instead of having a second string to the bow, they waste themselves in non-economic activities which bring in vices in their turn. Such a long period of idleness for superstitious and ignorant people is always fraught with dangers : eugenically they become a nuisance because they breed irresponsibly ; spiritually they become degenerate because they contract wasteful habits and incur reckless expenditure ; socially they become depraved because they turn out lethergetic and lose energy, vitality, and adventurousness. In every country, the agriculturists have subsidiary occupations. In Japan, rearing of silk worms is an important supplementary rural industry. In France, Germany and Italy, all have rural industries, such as, diary-farming, pig-keeping, poultry-farming etc. The period of idleness for the Bengal Ryots should be more productively used and in that lies a great amount of their economic salvation.

Marketing

The arrangements for marketing and movement of crops are extremely unsatisfactory in our province from the standpoint of producers. As a result, the producer does not get a competitive price. If the ryot does not receive economic price for his products, that spells economic

disaster of the highest magnitude. It is complained that the reputation of Indian agricultural products in the world's markets is low but improved methods bringing about improved products can make no appeal to the producers if they fail to get the full premium justified by their superiority: the distributive side is as much important as the productive side: production is bound to suffer if there is no economic price for products. A ryot markets his produce under very disadvantageous conditions. There are various handicaps under which the ryots labour for free, open and dishonest marketing of their products and some of them are noted below:—

(1) The farmer is unable to sell as and when he likes. The economic weakness of the farmer compels him to sell off earlier than he would like. He has limited holding power; he cannot hold out his products from a depressed market. In most cases, a farmer is a borrower; he has to pay his rent and cesses and to meet his family needs, he is also to pay the instalments of interest to the creditors. All these needs cannot wait. Moreover, it is often the case that the purchaser is the creditor and he can naturally dictate his terms to the producer. In short, the cultivator cannot wait for a better market.

(2) The farmer has limited storage accommodation; he has no means to store his products, even for a limited period.

(3) The financial difficulties are great with the cultivators. They have no means of raising regular or large credits, either on their own responsibilities or on their stocks. In places where the system of "dadan" prevails, the cultivators cannot avail themselves of a free market for their produce because money is advanced on the understanding, explicit or implicit, that the crops after harvesting would be sold to the creditors at a rate which is certainly not tempting to the borrowers.

(4) The absence of standardised weights and measures and of any system of regular inspection, the absence of definite standards of quality, the system of taking away large "sample" bargains between the agent who acts for producer and the one who negotiates for the purchaser—all these defects incidental to the want of regulated markets seriously handicap the producers.

(5) The absence of organised markets in the countryside accounts in a large measure for the existence of many grades of intermediaries¹ between the grower and the wholesale merchant and this operates as a formidable obstacle in the way of the cultivators realising a fair price for their crops. The need for middlemen cannot be obviated so long as the markets are not organised on scientific basis, and it is a fact that a substantial portion of the price paid by the consumer is intercepted by them.

(6) The unsatisfactory nature of transport facilities, the existing transport facilities being met by steamer services, railways (the total length of railways in the province is only

1 Re:—Jute small dealers, called "farias" by house-to-house purchase collect a few maunds of jute (say 25 or 30 maunds), they go to "hat" and sell it to a "bepari". Often a "faria" is financed by a "bepari" and a "bepari" in his turn is financed by the baler or his agent; the jute that is bought out by these out-agencies is carried to the central office of the firm and then exported to Calcutta after pressing the jute into bales. In the tobacco trade, there are "paikars" (corresponding to "farias" in jute trade) who sell to "aratdars" who act ordinarily as commission agents for the Arakanese merchants; these merchants despatch it to Chittagong for export to Burma or to Calcutta for despatch to Madras or shipment outside India. In the rice trade, there are local "farias" and "aratdars" on the one hand and the importing merchants at Calcutta, on the other. Tea market is only well-organised.

more than 3 thousand miles), countryboats, bullock carts, and the "palki" and "dooli" (principally for purdah woman).

The essential and ordinary functions of marketing are :—
(1) collection and assembly, (2) transportation, (3) wholesale distribution, (4) retailing, (5) risk-bearing, (6) financing in all stages.

We shall have to see that each and every function of marketing is well-organised, stopping all avenues of leakage and wastage, because "every part of the marketing process is a link in a continuous chain and that the strength of the chain depends on the strength of all its parts."

To bring about satisfactory conditions in marketing, the Royal Commission on agriculture have made the following recommendations with which the Central Banking Enquiry Committee are in entire agreement :—

(1) Improvement of transport facilities including rural communications,

(2) Lowering of railway freight rates and grant of other railway facilities,

(3) Establishment of regulated markets under provincial legislation on the general lines of the Berar and Hyderabad (Deccan) Market Acts,

(4) Standardisation of weights and measures,

(5) Adoption of measures to secure improved quality of produce by organisation amongst buyers and traders and to guard against adulteration,

(6) Fixation of standards and grades of commodities,

(7) Promotion of co-operative sale societies and other suitable organisations for purposes of sale,

(8) Holding of auction sales by agricultural departments to ensure increased price to the cultivators who produce improved varieties,

(9) Carrying out of market surveys,

(10) Appointment of expert marketing officers on the staff of the Agricultural Department who should be able to understand the language of the market and be conversant with the custom connected therewith.

The organisation of jute trade for the province is of great importance. Jute is the life-blood of Bengal and this is practically the only cash crop of Bengal and its production in a normal year brings to the ryots about Rs. 40 crores. The ruinous and extremely objectionable activities of the "Futka" markets are responsible for the filtering down of injustice in the distributive side of the trade: they are also responsible for the fact that jute is cheaper in the consuming centres like Hamburg and Antwerp, than in Calcutta—a fact which is very painful for the ryots of Bengal. It is true no doubt that a well-organised Futures Market is indispensable for properly marketing a commodity like jute because the crop is a seasonal one and is grown only in the Gangetic

1. "Trading in futures is the rational development of marketing to its highest pitch. It effectively creates world demand and world supply. Through futures trading, a world price is made and kept uniform; at any time the commodity can be dealt in at an appropriate price; fluctuations in prices are minimised and smoothed out; the impact of forecasted demand and supply is more easily discounted; distribution is facilitated and cost of financing lowered; at all stages of production, distribution and manufacture, a valuable safeguard is made available against price fluctuations."

delta and Brahmaputra valley, while they belong practically to every part of the world. A Futures Market¹ for Jute is necessary: because it is always possible to buy and sell in such markets, it enables the dealers, producers and consumers to hedge their commitments; it helps in reducing wild fluctuations in the price of the jute—transforms waves into ripples—when the ideas of actual buyers and sellers are poles apart; it helps to produce equilibrium between supply and demand. The East India Jute Association and other Futka markets do not satisfy the requirements of a real Futures Market. The East India Jute Association is essentially a sellers' market in the absence of bonafide buyers. A real Futures Market must represent all sections of the trade. It is essentially necessary that "the Futures Markets of Jute in Bengal should be reorganised in such a way as to help distributive trade, with or without speculative transactions, but in no way affecting the welfare of the ryots." Manu Subedar rightly pointed out that in any scheme of the organisation of jute trade, it would be necessary to secure legislative sanction behind it and it would also be necessary to provide against combination of foreign interests, both as buyers of jute for local consumption and as shippers helped by foreign banks.

Mr. A. P. McDougal in an interesting memorandum before the Central Banking Enquiry Committee has recommended the establishment of a jute control corporation, having powers to fix prices for the raw material, to eliminate unnecessary costs of distribution to control output, and if necessary to undertake distribution and effect all payments; the management should be in the hands of a directorate, representing all the interests concerned. The Central Banking Enquiry Committee have recorded their suggestions (pp. 226-27) for improving the scheme. Any way, the organisation of Jute trade is of paramount importance for the raiyats of Bengal, nay, for every section of the province.

Transport Question

There is another peculiarity of the province which must always be borne in mind in tackling any problem, conducive to the welfare of the rural population. Bengal is a country of Deltas: a very large proportion of the province is deltaic. The joint deltas of the Ganges and Brahmaputra cover from 50,000 to 60,000 sq. miles. Western Bengal contains the deltas of the Salai, the Kasai, the Dhalkisor, the Damudar, the Adjai and the Mor and part of the delta of the Ganges; Central Bengal is entirely Gangetic Delta; Eastern Bengal (excepting a few insignificant hill tracts) is entirely deltaic, containing much of the living delta of the Ganges, the greater part of the deltas of the Brahmaputra, Surma and Barak and smaller deltas met as that of the Matimuhari; Northern Bengal contains portions of the Gangetic and the Brahmaputra deltas, together with the delta of the Tista.

The fertility of the soil is due to the deltaic nature of the province: the great rivers annually flush and fertilise the land, these floods supplying the crop with the moisture it requires and restoring fertility to the soil by the rich deposits of silt which they bring down. But the soil is bound to deteriorate because of the silting up of the rivers which would deprive the soil of the silt it used to receive. The construction of railways requires embankments for their tracks and a system of feeder roads to convey passengers and produce to their stations—all these disturb the natural process of flood; to guard against periodic inundation of the country destroying the continuity of road and railway communications, river embankments were constructed—all these interrupt the natural system of deltaic irrigation, impede drainage and the net work of channels and render boat traffic difficult. This want of ingress and egress of rain and flood is responsible for the deterioration of agriculture and the distribution of water over the fields is necessary for cultivation and the final draining of

the land is essential for the aeration of the soil, but embankments, railways, metalled roads which are necessary compliments to improved communications impede both irrigation and drainage. Western Bengal and Central Bengal are better supplied with railways and metalled roads and Eastern Bengal is the worst sufferer in this respect and so the fertility of Eastern Bengal is well-known. The land irrigated with river water yields better than the land irrigated with rain water alone. It is said that in villages adjacent to the Damudar, land irrigated with river water yields 12 maunds of paddy per bigh whereas, when cultivated with rain water, the crop is only 7 maunds. Thus the shutting out of the Damodar is responsible for a heavy loss; this shutting out has deteriorated not only the soil but also public health. But there has been no deterioration of agricultural conditions in Eastern Bengal where railways, metalled roads and embankments are fewer. Dr. Bentley in his report on "Malaria and Agriculture" to the Government of Bengal made a pointed reference to this aspect of the question when he said :—"We can only make a very rough guess at the total agricultural loss occasioned to the Burdwan and the Presidency Divisions by the embanking of the country. In the case of Central Bengal (Presidency Division), which is wholly deltaic, the gross agricultural return, on the basis of the Dacca district estimate, ought to be in the neighbourhood of 50 or 60 crores of rupees per annum, a very similar amount should be allowed for the Burdwan Division; and a total of between 100 to 130 crores of rupees per annum for both divisions. But in all probability the actual outturn is considerably less than half this amount owing to the impoverishment of the soil, the lack of moisture and the local water-logging that has followed the embanking of the country and the shutting out of the silt-bearing river water. Taking Western and Central Bengal (the Burdwan and the Presidency Divisions) together, the present gross agricultural outturn is probably somewhere between Rs. 50 or 60 crores, or less than one-half of what it

would be if irrigation with river water was made available. Formerly, very large areas in both of the divisions mentioned used to benefit by a natural process of deltaic basin irrigation with flood water in the same manner that Eastern Bengal does at the present time. But since this flushing of the country has been prevented, agriculture, health and prosperity have suffered, millions of lives have been sacrificed, thousands of crores of rupees have been lost, the people are sunk in poverty and a vast proportion of them suffer each year from recurring attacks of malaria."

Dr. Bentley further pointed out that the increase of malaria invariably follows the embanking of deltaic areas in Bengal because the inundation of the country is unfavourable to the multiplication of anopheles mosquitoes, the reasons being that, firstly, flooding reduces the dangerous "water-edge" which affords safe cover for mosquito larvae, secondly, owing to the large surface exposed to the rays of the sun the temperature of the water tends to raise so as to be exceedingly unfavourable to the life of anopheles larvae; and thirdly, the physical and possibly the chemical character of the river water is inimical to anopheles larvae. Naturally, Western Bengal and Central Bengal which can boast of more improved communications than Eastern Bengal are more unhealthy; their soil is infertile; their population is declining because of increased mortality and reduced fecundity; hired labour is dear because of the absence of incentive to migration into those parts of Bengal; and there is more economic stress among the population causing a coincident increase of anopheles mosquitoes leading to the spread of malarial infection.

There is another important point to be noted. The province cannot go without jute-crop. But jute is an exhausting crop, it impoverishes the soil to a much greater extent than the other crops. It is well-known that jute cannot profitably be grown for two years in succession on the same

land: The jute-land requires rich manure such as the silt deposits from the rivers and in the interest of the whole province, the extraordinary fertility of East Bengal lands, manured by annual inundations by rivers, should not be disturbed by construction of embankments, railways and metalled roads which would affect the jute-crop by reducing the productive capacity of the soil. Over 60 p.c. of the jute grown in Bengal comes from the non-malarious eastern districts, 25 p.c. from Northern Bengal and something like 10 p.c. from the Burdwan and Presidency Divisions. Therefore, the greatest economic need of the province is that the deltaic character should not be disturbed: in order to bring about improvements in agriculture and in public health, the silting up of rivers should be stopped and the annual flooding of the country should not be obstructed. It is true that railways and roads are great instruments for the social and commercial organisation of the country. But railways and roads should be properly designed with due regard to the physical peculiarities of deltaic area, so as not to interfere with the irrigation and drainage so vital to their agricultural prosperity. But upto the present time, things have shaped in a way without due regard to the fundamental needs of agriculture and public health. It is this heedlessness which is responsible for the evaporation of the former prosperity of Burdwan and Hooghly; it is because of unscientific roads, silting up of the river-channels and the insufficiency of railway culverts that agricultural deterioration is evident in the districts of Central Bengal. It is true, and no one disputes it, that railways, roads, and river embankments are necessary but a sufficient number of water-ways is always to be provided for.

Dead Rivers

We find that the silted rivers in Bengal are a great danger: they bring about appalling decline in agriculture,

population and sanitation. The Irrigation Department Committee, Bengal, (1930) observe that the deterioration has already proceeded so far that it cannot now be checked and that Central Bengal is doomed to revert gradually to swamp and jungle. Dr. Radhakamal Mukherjee prophetically remarked that by 1970 the extension of swamp and jungle in the hinterland of Calcutta and the contamination caused by the silting up of the local deltaic channel used for the removal of sewerage might seal the doom of the city of Palaces.

Water-logging, malaria and agricultural depression are intimately connected. To ascertain the influence of the open and the closed river on malaria, a number of villages in Murshidabad, Nadia and Jessore were examined and the following table is illuminating :

Rivers:	Number of villages Examined.	Average spleen rates.
Live	33	46.0
Dead	38	64.5
Bils	56	62.2
Dry land	45	45.6

It would be interesting to recall that Raja Digamber Mitra¹ propounded the doctrine that impeded drainage was the chief cause of epidemic fever in Bengal. The report of Dr. Payne on the Burdwan fever published in the Calcutta Gazette of the 10th January 1872, agreed that "the cause of epidemic fever is the gradual conversion of a well-drained healthy and prosperous tract of the country into the condition of Lincolnshire fens for many years ago with a sub-soil water-logged and exhaling marsh poisons for the population to absorb".

Impeded drainage may be due to silted rivers or railways and road embankments. The water first flows to the paddy

1. Raja Digamber Mitter's minute published as an appendix to the Report of the Epidemic Commission of 1861.

field; from the paddy-field into the beel and from the latter into the khals and from the khals into larger streams and from streams to navigable rivers. An obstruction occurring in any of the conduits must interfere with the drainage. Thus without the silting up of rivers, the drainage may be impeded.¹

Mr. Adley, the Engineer in his report dated the 25th June 1869 maintained that the salvation of the country depended on Jheels and Jullas with which the country was thickly interspersed being completely drained. "There is no denying the fact that the water-lodged subsoil of villages, consequent upon impeded drainage by roads, railways and embankments have mainly contributed to the generation of the miasmatic poison resulting in the outbreak of the epidemic fever." North Bengal districts are ravaged by malaria owing to the diversion of the waters of the Teesta river to the east. Central Bengal has deteriorated owing to the blocking of the headwaters of her river systems, the Bhagirathi, Jelanghee etc., by sand deposits and blocking of the inland waterways by railway bunds and bridges. West Bengal has been doomed because of railway bunds and blocking of the headwaters of the Damodar and her tributaries. All these places were once healthy, but now they are the most unfortunate moribund areas. The rivers of Bengal either due to slow earth-movement or delta-building activities periodically oscillate between wide limit and the prosperity of East Bengal should not be taken to be a lasting one: "if any river forsakes an old channel and scoop out a new one, the old basin becomes the centre of malaria and black fever".

According to Sir W. Wilcocks, "Central Bengal can be revived by clearing off the headwaters of the Mathabhanga

1. The Hindu Patriot, 1872, in supporting Raja Degumber Mitter's contention brings forward many specific cases where epidemic fever has spread because of impeded drainage.

and by erecting an Egyptian barrage across the Ganges 11 miles down stream of the Baral head. This barrage will head up the waters of the Ganges by about 7 feet for hundred miles up stream and cause it to send a large volume of its excess water down the rivers of Central Bengal. Another advantage of such a scheme will be that less water will pass through the Padma. The waters of the Brahmaputra alone are more than sufficient for Eastern Bengal."

The taming of the Damodar was responsible for the decline of West Bengal: the E. I. Railway was opened at a huge cost to the Burdwan division.

In malaria-stricken areas, the jungle is on the increase. Dr. Radha Kamal Mukherjee rightly observes:—

"In the dense shade of the jungle, there are innumerable low-lying places, swamps, ponds, and the like where anopheles thrive, while the small weed-sheltered pools, and burrows, pits and ditches near the homestead encompassed by overgrown bamboos are peculiarly favourable to the larvae. The increase of jungle invading streams, ponds, fields and homesteads alike is thus symptomatic of the decline of agriculture, the decay of an old inhabited area, and the prevalence of malaria. On the other hand, malaria decimates the rural population, leaves them weak and listless and leads to wholesale emigration from the villages, leading to increase of jungly growth. All these are, however, primarily due to the want of natural drainage in the country, owing to its position in the moribund tract of the delta where the active land-building function of the rivers has stopped. Where the rivers are no longer open, tidal and clean-banked as in the active delta, not merely is malaria a great scourge but also there is soil exhaustion due to the lack of flush-irrigation, the red water famine."

It is also well-known that agricultural decline is inevitable where the rich red-water of flood has not irrigated the

crops. Crops deprived of the red-water are bound to be anaemic and it is admitted that anaemic plants and anaemic men and cattle go together.¹

The following table² giving a comparison of agriculture, health and population movement in the moribund and active deltas explains the whole story:—

I	II	III	IV	V	VI	VII
Districts in the moribund delta.	cropped area 1901-2.	Normal cropped area at the end of the last century.	Cropped area 1931-32	Percentage variation of cropped area	Incidence of malaria 1930 (Fever Index)	Percentage variation of population 1930-31
1 Burdwan ...	1,128,300	1,248,300	742,100	-40	53.4	+3.7
2 Nadia ...	847,400	990,400	913,200	-7	56.5	-8.1
3 Murshidabad ...	1,136,600	1,106,600	946,500	-14	41.7	+22.9
4 Jessore ...	1,270,500	1,303,600	887,300	-31	48.2	-7.2
5 Hooghly ...	491,300	541,400	293,900	-45	46.6	+6.2

Districts in the active delta

1 Dacca ...	656,080	1,086,169	1,709,000	+57	9.7	+28.9
2 Mymensingh ...	3,124,400	3,076,800	3,674,500	+19	11.0	+28.5
3 Faridpur ...	1,252,200	1,295,800	1,470,300	+13	26.6	+21.8
4 Bakarganj ...	1,686,000	1,660,000	2,015,000	+21	8.3	+27.1
5 Tippera ...	1,297,400	1,315,900	1,472,800	+11	7.2	+37.7
6 Noakhali ...	800,900	429,087	1,192,600	+152	10.5	+42.9

From the above figures, it is evident that the future of Bengal belongs to the eastern districts and that "the new Bengal is arising on the banks of the Jamuna, the Padma, and the Meghna."³ If Bengal is to live, Central and Western Bengal must be saved. Sir William Wilcocks suggested the

1. Sir W. W. Wilcocks' article in the Viswa Bharati Quarterly, 1928.

2. Taken from a speech by Dr. Radhakamal Mukherjee at the Indian Institute of Economics, Calcutta, 1933.

3. This roundly means that the future belongs to the Muhamedan and Namasudra peasants who are found in large numbers in Eastern Bengal.

revivification of the dead rivers and the flushing of the country on their banks with silt-laden water from the Ganges and its effluents during the monsoon. Systematic flush irrigation would replenish the streams, swamps and village ponds; it would enrich the soil and thus combat malaria and improve agriculture. This would provide an abundant harvest of fish and make congestion of the rivers impossible. "In Bengal there are many varieties of larvicidal fish indigenous to the country which are excellent surface-feeders and either breed in confined ponds and tanks or migrate for breeding purposes to all large swamps and inundated rice-fields, drains and ditches in the countryside. Both flush irrigation and systematic cultivation of such fishes will contribute in large measure towards the biological control of malaria which is a far more economical means of its control than the application of anti-mosquito measure or mass quininisation."

Dr. Radha Kamal Mukherjee in suggesting a survey, district by district, of the problems of obstructed drainage, flood and river control in different areas of the delta remarks that the extent of and the prevention of erosion in the catchment areas of the important rivers and the related questions of afforestation and swamp land reclamation as well as the effects of canal irrigation in the United Provinces and Bihar on the river flow must be inquired into.

Dr. Meghnath Shah suggests the need for a complete hydraulic survey of the decadent areas. The huge discharges of the Ganges, the Brahmaputra and the Damodar, their periodic variations, the amount of silt brought by them, the distribution of water in the country, study of the precipitation data for each basin—all these factors must be accurately studied. Accordingly, Dr. Shah insists on the setting up of a Hydraulic research laboratory for the study of the problems of river training, flood irrigation, navigation and water-power development in Bengal. Over and above a research laboratory, there must have a department for field service

which will undertake a hydrographic survey of the rivers of Bengal, including relevant topics in topography, collection of precipitation data and other geographical factors likely to be of use in the preparation of great constructive projects. The department may be financed by imposing a small through-fare tax on passengers and trading parties utilising E. I. Ry. and E. B. Ry. lines.

Water-Hyacinth Pest

Water-hyacinth is a serious water-pest in all tropical countries. In Eastern districts of Bengal, the pest is working havoc. It damages public health by polluting water, reduces the normal yield in paddy, annihilates and displaces aquatic fodder which causes scarcity of fodder grasses and the cattle is forced to feed upon water-hyacinth which contains 95 p.c. of water and as a result the quality of milk and the health of cattle deteriorate. It also affects pisciculture in Bengal by abundance of leaves and dense vegetation, and it blocks water-communications by boats etc. Its native home is Brazil and it grows very richly in tropics. This aquatic herb is propagated by seeds. Because of the dangerous nature of the pest, the Narayangunge Chamber of Commerce in East Bengal in 1914 brought the problem to the notice of the Local Government. In 1925, the Associated Chambers of Commerce in India and Ceylon urged the Government to introduce legislation for eradication. Committees have been set up, reports published but no action has upto yet been taken. Legislation is no good for the purpose of eradication; biologists have yet to discover some fungus or bacterium for destroying or controlling the growth of the plant; chemical and thermal processes of killing the plant are unsuited for a very extended area; the mechanical process of pulling up and drying the plant and to burn the same is a long drawn out one.

Mr. Albert Howard (formerly Director of the Institutes of Pusa and Indore) describes the method of converting the weed into valuable manure for jute and particularly for rice cultivation in Bengal. The method is described, step by step: "The weed was mixed in fresh condition with earth, cow-dung and wood-ashes in the Chinese fashion in a compost heap. To begin the heap, five cart loads of weed were spread on the ground in the form of a rectangle, 18 ft. by 12, and about 9 inches deep. Half a cart load of earth, half a cart load of ordinary farmyard manure and two baskets of wood ashes were then spread uniformly on the weed, moistened with water and the whole was mixed. A second layer of water weed was added and again mixed with moistened earth, cow-dung and wood ashes as before. This procedure was continued till the heap contained from thirty to forty cartloads of the weed. The heap was then lightly covered with earth to prevent excessive drying and was left for a month. An active fermentation at once began and the water weed was rapidly broken down into a damp moistmass. At the end of the first month, the heap was turned to promote through aeration. By the end of the second month the fermentation was complete and the water weed was converted into finely divided organic matter resembling moist leaf mould. This material when added to the soil stimulates growth in a remarkable manner and proves a valuable manure."

The possibilities of converting the weed into manure should be fully explored.

Road Development

There must be an intensive effort to push on road development in Bengal. Bad roads greatly deter the economic development of the country. But "the deltaic nature of the greater portion of the province with its net-work of inland navigable rivers, streams and waterways, necessitating a

large amount of bridging, the low level of the land surface requiring to be raised by embankments for constructing roads, keeping in view the requirements of drainage, public health and agriculture, the climatic conditions including heavy rainfall have made the construction and maintenance of roads in Bengal expensive."

The Government of Bengal announced in June, 1934, a five year programme of road development costing 67 lakhs of rupees and involving the construction of over 200 miles of road. The programme was proposed to be financed by grants received from the Central Road Fund which was composed of receipts from taxation on motor spirit and from which the grant from Bengal for the period from 1929-30 to 1933-34 was expected to be about 68 lakhs. In carrying out the programme, the Government is advised by the Provincial Road Board and a special officer for road development has been appointed.

The programme is as follows :—

Name.	Total length in mile.	Length in mile taken under the programme	Amount sanctioned.
Calcutta-Jessore Road ...	28½	11½	Rs. 5,00,581
Diamond Harbour Road ...	25½	25 1/8	„ 6,70,000
Grand Trunk Road ...	53	34	„ 9,31,513
Mainamati-Barkanta Road	9	9	„ 2,77,400
Ghosepara ...	15 3/4	15 3/8	„ 4,63,503
Pabna-Ishurdi Road ...	17	17	„ 8,05,570
Tangail-Mymensingh Road	58	13	„ 3,40,795
Magura Jhenida Road ...	7 3/8	7 3/8	„ 3,75,223
Dacca-Narayangunje Road	9	9	„ 5,56,500
Chittagong-Arakan Road	96	30	„ 5,00,000
Burdwan-Arambag Road ...	25	8	„ 5,00,000
Krishnagar-Jaguly Road ...	15 5/8	15	„ 4,20,000
Ilambazar-Dubrajpur Road	16 7/8	16 7/8	„ 3,50,000
	<u>326 1/8</u>	<u>211½</u>	<u>66,91,085</u>

The projects in their entirety will cost Rs. 99,84,608.

Policy of Afforestation

There are 6,773,306 acres of forests in Bengal. Reserved forests are 6,478 sq. miles, protected forests 660 sq. miles and unclassed forests 3,445 sq. miles. Forest protection is a great economic need. The results¹ that are expected from afforestation are :

- (1) Modification of the climate :
 - (a) value of trees as wind-screens :
 - (b) tendency to increase equability of temperature;
 - (c) probably a slightly increased rainfall, since the bare granite rocks when heated tend to check condensation;
- (2) Reduction in floods and droughts and silting up of river-bottoms by checking the rapid run-off of water from the hill, which is a help to agriculture;
- (3) development of cattle and sheep pasture;
- (4) necessary preliminary to extensive irrigation schemes;
- (5) preservation and improvement of the supply of fish in the rivers and estuaries through the more even flow of water.

The Forest Administration Report for Bengal, 1932-33, which shows progress in reproduction and afforestation under the working schemes states that the area to be regenerated is 2,01,074 acres (7,980 acres per annum), the area on which regeneration is completed is 28,543 acres. The expenditure to date from the commencement of the period is Rs. 4,72,056 and the upkeep expenses incurred is Rs. 5,18,621. The revenue realised from the date of the commencement is Rs. 1,86,199.

1 Dr. R. K. Mukherjee's India's Rural Economy.

Ways of Economising Land and Labour

It is well-known that a growing agricultural population must choose at least one of four things, viz., (1) it may improve the arts of production by new discoveries in the science of agriculture; (2) it may acquire new lands; (3) it may reduce its population by migration either to new lands or to trade; (4) it may reduce the standard of living. In Bengal, the optimum density of population has been reached; the pressure on land is immense; the possibilities of emigration and of new industries are not very great. So the ideal way is to economise land and labour. In Bengal, the land is fertile; the land from physical, chemical and social considerations is good.¹ To economise land, one is to resort to intensive farming which means any or all of the following methods: (a) application of more labour in the preparation of the soil and the handling of the crop, (b) the use of more capital on a given area of land and a given quantity of labour, thus enabling the same labour to prepare the soil more thoroughly and care for the crops more efficiently, (c) application of more scientific methods to the improvement and maintenance of the fertility of the soil.

There are natural obstacles to intensive cultivation. There is a tendency of the soil to decline in fertility and there is the law of diminishing returns which may be described as the great law of agricultural production. To counteract it, the greatest intelligence in cultivation, rotation of crops and in application of manure and artificial fertilisers is necessary.

The economising of land lays emphasis on the economising of labour. Large product per acre is not everything: large product per man is a great asset in agricultural

1 Bad physical conditions of land: too stony, too wet, too dry; bad chemical conditions: too much acid, too much alkali; bad social conditions: too much taxation; too much speculation.

economics. "It is only where the product per man is large that there is a high standard of living and a high state of well-being for the average man." To economise labour, the chief requisites are the adequate supply of land, adequate equipment in power, tools and machinery, adequate technical knowledge of the science and art of agriculture and superior business management. In Bengal, the waste agricultural labour is a curse: the unemployed, the improperly employed, the imperfectly employed and the voluntarily idle are kinds of waste labour. Idleness, rowdyism, neighbourhood quarrelling, dishonesty, listlessness, irresponsibility and lack interest in one's work are recognised sources of waste energy.

Growth of Uneconomic Holdings

Fractionalisation of holdings which is going on unimpeded is a great corrosive factor in the agriculture of our province. Scattered field distribution is not an evil in India; it minimises the risks of failure of crops for the individual cultivator. Dr. Radhakamal Mukherjee puts the case for scattered field distribution in the following way: "In many parts of India we find that two or more staple crops are grown in dispersed fields in different soil areas, so that, while a deficiency or an irregular distribution of rainfall may destroy one crop, there may be favourable returns from other fields. Indeed, the elaborate system of crop rotation which distinguishes Indian from Western farming has been possible chiefly because the holdings are dispersed."

The reasons for diversification of crops are: (a) every crop has its enemies and these tend to multiply if the land continually gives the same crop; (b) different crops extract the different elements of plant food from the soil in different proportions and a wise diversification of crops will tend to exhaust the soil less rapidly; (c) different crops require labour

and attention at different times of the year. In Bengal the limit of wise fractionalisation of holdings has been passed. With the increase of population, importation of individualistic notions of property, break-up of the joint family, the result of the agnatic principles of succession among male heirs, and the desire of equality, the fragmentation of holdings has reached a ridiculous length: half of the tenant population in Bengal possesses holdings below the subsistence limit of three acres. In Bengal, the unprotected tenant occupies smaller-sized plots and pays higher rents. This process of fragmentation shall have to be stopped and accordingly reformers suggest a forward scheme of consolidation. The problem of consolidation is closely connected with the reform of the land and revenue law and with the present practice of our farming. Moreover, a policy of consolidation on the English Enclosure Acts is unsound. In our country the density of population is greater and accordingly a scheme of consolidation involves expropriation and distress on a greater scale in absence of opportunities of emigration and of industrialism. In our country, the ideals of large farms and large fields are not tempting, because they require greater capital, greater credit facilities which are absent here. For our country, we should adopt the ideals of small farms, rather economic holdings. In a province, where there are grades of tenants, protected and unprotected, and which is dependant on rainfall, the introduction of economic holdings is also beset with difficulties. And to bring about this restripment of plots, legislation is inevitable. We have seen that scattered holdings should not be done away with because of the uncertainties of rainfall; it is also well-known that fragmentation of holdings below economic unit which is the condition at present lowers the standard of living, brings about chronic unemployment, breeds inefficient labour which in its turn lowers efficiency of agriculture and delays introduction of scientific agriculture. In Europe, we find that there is a legislation to compel all villagers to accept restripment

when a majority desire it. In Austria, such a scheme is forced if 66 p.c. of cultivators agree; in Switzerland, if approved by 66 p.c. of cultivators representing more than half the land; in Prussia, a bare majority.

Those who advocate agrarian reform through legislation argue that the economic cultivation unit is to be determined region by region and law is to protect it against subdivision. Now, to achieve consolidation of holdings, the problem that faces us is how to protect them from future subdivision. To make matters smooth for legislation, the ideal of equal inheritance by birthright is to be broken. "In Europe" the custom is to leave the property to a single heir who gradually pays off the charge laid on it by the father for the benefit of the other heirs. If he finds the property unprofitable, he sells it undivided thus the size of the holdings does not diminish."

Consolidation of holdings by legislation in a permanently settled province is open to objections: it affects the proprietary character of the zemindars; it disturbs the vested rights of the protected ryots. Moreover, it would break the law of succession, and would divert the surplus population from the land. In ryotwari tracts where the theory of State-landlordism reigns, the experiment of consolidation by legislation may be tried without violently disturbing any vested rights.

1. In Germany, the practice among peasants of succession to undivided properties by the creation of a preferred heir is encouraged by law; in Prussia, only one heir is to succeed to the family holding under a new law in 1924; in Denmark, the reconstituted small holdings can be sold but not subdivided and the owner is to determine which child shall succeed and the other children are to be compensated. In parts of Austria, the farm is to go to a single heir without any division of property and the settlement is to be made with the co-heirs by an indemnity in the form of a sum of money or mortgage.

Uneconomic holdings have also brought forward the question of agrarian reform involving acquisition of big estates and their division into farms for small holders by virtue of legislation. The evils of subletting and the emergence of a long array of middlemen interested in the land have been responsible for bringing about deplorable condition of the agriculture of our province. If we examine the land-settlements in Central and Eastern Europe, we find three principles: (a) expropriated owners have a right to compensation; (b) new small holders should pay by easy instalment at least a part of the price of land they acquire; (c) new holdings are such as can be farmed by the owner and his family. In Poland, compensation is put at one-half of the market price, in Roumania and Asutria, it is limited to a certain multiple of the annual value of land, in Bulgaria, it is based on the average value of land from 1905 to 1915 reduced by amounts from 10 to 50 p.c. In Germany, according to the law of 1919, owners of great estates are to join Land Transfer Associations which have authority to buy at a fair price or to expropriate lands not well-cultivated or estates of unusually large size. In Denmark, the State assists tenants to purchase small holdings through credit-bank or by direct subsidies.

Encouraged by such land settlements in Europe,¹ our economists suggest the acquisition of zemindaries by the State with the compulsory clause of compensating expropriated Zemindars in Bengal; they further suggest that

1. The Act of 1909 in Ireland allows landlords to sell their rights in land held by tenants for a guaranteed price paid by Government and the tenants to buy their farms paying for them by easy instalments. If the owner does not accept the final offer of the Estates Commissioners, the land is acquired compulsorily. The Scottish Small Holders' Act of 1911 has a compulsory clause authorising compulsory acquisition of land for the purpose of constituting small holdings.

Government are to advance the amount for expropriation and are to be paid by the purchasers by means of annual repayments to include interest and a quota of the repayment of the principal. To remedy the situation, easier method has been suggested to the effect that the Government might guarantee to the expropriated landlords the annual payment of their existing net rents and security for themselves and their heirs; the Government on its part would settle the tenantry on the estates with the restrictions of sale, mortgage or transfer and prevent such holdings being reduced to uneconomic limit, and the facilities for credit are to be supplied by the State so that the tenant might work on acquired holdings free from debt.

All these are measures for the preservation of the greatest number of economic holdings, parcelled out into small farms. For the abolition of the long array of middlemen, other measures are recommended. Land belonging to the peasantry should not be transferred to the clutches of the non-cultivating class. The capture of occupancy privileges by the middlemen and money-lending classes and the lowering of the status of the peasantry are great evils. Occupancy rights of the Bengal peasants are transferable and herein is the germ for the growth of middle tenures. Occupancy right should accrue to the tillers of the soil only and "no tenant should occupy occupancy right in so much of his holding which is above the size of economic holding and cannot be cultivated by him, or his family without hired labour". Importation of hired labour does not help in the determination of the size of the holding. The letting of land to non-cultivating families should be discouraged. Legislation¹ is recommended to check intermediaries in the soil by subjecting the right of enjoyment of the land to cultivation on the part of the family, by removing land from the sphere

1. The Russian Agrarian Code, 1922.

of buying and selling and forbidding purchase, sale, gift or mortgage of the land. This is a radical method: at least things must be made to shape in a way whereunder land is to be let to a cultivating family and no one may rent any larger quantity of land than he can cultivate by the labour of his family.

An economist of repute suggests following measures against sub-infeudation: "If merger were made obligatory, a large number of existing tenures would automatically disappear. It is against public policy that the same person should be both landlord and tenant of the same property and it involves great opportunity for fraud. Apart from merger, the only means of reducing existing tenures would be by expropriation. Facilities might be given to the tenants of an absentee middleman to buy him out or to the holder of assignment to convert into outright sales, land courts being established to fix the price in both cases. As an alternative, an opportunity should be given to absentee middlemen to revert to the land by directly cultivating it and thus acquire the status of the occupancy ryots".

. Crop-Planning

The prosperity of Bengal depends on jute and rice. Jute being a monopoly produce wields a great force in improving the economic solvency of the province. The Government of India do not intend taking jute within the ambit of planning. Jute is neglected because it is a Bengal produce where the Permanent Settlement prevails. Government has a very narrow and contracted view of the economics of the province. They think that the improvement in jute trade would bring in no increased demand of land revenue, forgetting the elementary canons that the prosperity of the people is bound to improve the State-exchequer in a direct or indirect way. They think more of wheat and less of jute.

Jute being a monopoly produce can alone lift the province out of the abyss of depression. It is the cheapest packing medium and indispensable to world trade. Moreover, the demand is more or less assured. It is true that through the shrinkage of world trade, the jute trade is extremely depressing at present.

The Jute-Enquiry Committee in Bengal, 1934, dismiss the idea that there was systematic overproduction¹ of jute, as the prices show a steady rise aggregating about 150 p.c. in the 30 years. The Committee give the following prices² of Jute per maund received by the ryot:—

				Rs.	As.	P.
1900-04	...	...	...	4	1	0
1905-09	...	...	...	5	2	0
1910-14	...	...	...	6	8	0
1915-19	...	...	...	6	15	0
1920-24	...	...	...	8	8	0
1925-29	...	...	...	10	4	4

After 1929, the ryots are getting very low price for jute and this factor is bringing the question of planning or regulation to the forefront. The Jute Committee have discussed all the proposals of intensified propaganda, of compulsory restriction and of the complete control of the crop as a State monopoly. The Committee have dismissed compulsory restriction because that would bring in the question of compensation; they have also discarded the financing of the crop by the Government because that would involve them in big financial operations; they have recommended intensified propaganda as a safeguard against over-produc-

1. "Overproduction of jute does not mean that its supply is excessive from an absolute point of view. It means that the supply is such that it cannot adjust itself to demand at a price which brings normal profit for the ryot".—Dr. J. C. Sinha.

2. Making allowance for changes in the purchasing power of money throughout the post-war period, the ryot obtained less real value for jute than in 1913.

tion. The Minority Report of the Committee was in favour of compulsory restriction and it was clearly stated that jute being a monopoly produce would lend itself to such form of control as would assure a stabilised price to the grower.

I would categorically place the arguments against compulsory restriction of the jute area :

(1) It would disturb the rights of landlords, rights inherent in the Agreement of 1793.

(2) It would lower the value of the land, if any portion of it is debarred from the cultivation of the jute-crop.

(3) It would vitally affect the rights of occupancy ryots in proportion as they would be forcibly asked to cultivate jutelands for other crops.

(4) There can be no enhancement of rent because of the rise in the price of jute and if the jutelands yield to staple food crops, (in which case an enhancement is possible), the interests of ryots would be adversely affected.

(5) It would be a piece of discriminating legislation as the owners and occupiers who have invested capital and labour in the jute-lands would have to use them for other purposes.

(6) The cultivators, used to and trained in the cultivation of jute crop, would be required to lend their labour for other crops—a fact which would surely jeopardise their interests and deteriorate their labour.

(7) It would be a case of Governmental interference not in the relation of the landlord and tenant in the interest of the latter but in the enjoyment of the freedom of action of the landlord and tenant.

The objections, noted above, are not dealt with by the Jute Enquiry Committee, nor have they ever been discussed

in the press, but they await refutation. Those who favour revolutionary action in scorn of vested rights do not perhaps recognise the repercussions of their action in all the spheres of the body-politic of the country—with them it is not logic that weighs in the consideration of any problem. But at the same time it must be admitted that voluntary restriction is no remedy.

The problem of substitute crops for Jute is not to be easily dismissed. Many suggest rice as a substitute crop. It has been a common experience in Bengal that the lands released from jute cultivation have invariably yielded rice. With the growth of the spirit of economic nationalism, the rice-growing areas in other countries have recorded a phenomenal increase (of about 3 million acres between 1921 and 1929), the most remarkable expansion taking place in Bulgaria, Egypt, Indo-China, Italy and Java. It has led to serious demoralisation of the entire rice-trade in India. There is no Rice Law here as is found in Japan for the steadiness of the trade. The rice trade is already in a deplorable state and it would be unsound to create conditions worsening the trade much more.

Sugar-cane is also suggested as an alternative crop but its cultivation on a wide scale cannot be recommended unless a large number of sugar factories are set up to assure the demand for the larger yield. Cane is an All-India crop and its rapid cultivation is taking place in other provinces.

It would be a narrow view if we insist that the only redemption of Jute depression lies in compulsory regulation of the jute-crop.¹ Jute being a monopoly crop has all the

1. Broadening the basis of agriculture is recommended by some. "Let Bengal be divided into economic zones for developing suitable money crops with greater industrial utilisation for these crops instead of concentrating upon one crop."

possibilities of a bright future if satisfactory marketing arrangements could be made. Jute does not fetch monopoly price for the cultivators and that is the real problem. The fixation of a remunerative minimum price for jute would be an effective remedy for improving the purchasing power of the growers.

The rice-trade is also in a state of depression: the price of rice has fallen ridiculously. And it is said that Bengal has lost over 54 p.c. of her agricultural income by the fall in the prices of rice and jute.

Owing to the growth of the policy of economic self-sufficiency, countries in the East which formerly used to take rice from India, namely, Ceylon, Malaya, Dutch East Indies and Japan are aiming at becoming less dependent on foreign sources of supply. Moreover, India is meeting with increasing competition from Siam and Indo-China in Asiatic market and with Italy and Spain in European markets. If we exempt Burma, Bengal has practical monopoly of rice in India. It is also true that India does not produce sufficient rice for her own consumption and this means that India is having competition of better-graded and better-marketed rice supplied from America, Spain, Italy, Siam, Indo-China etc. The position of the rice-trade in India has been much worsened by the export duty which stands at 2 as. 3 p. per maund. And there is no duty on rice imported from foreign countries whereas there are import duties on rice in foreign countries. It is a general rule that "when the products of our soil have to find a foreign market and in cases in which they enter into foreign competition with those of other countries, the direct effect of export duties must be to place our products in those countries at a disadvantage with their foreign competitors; in point of fact it cannot be denied that in such cases an export duty falls chiefly upon the producer who cultivates the articles." There is no case at all for export duty on rice, especially when the trade is

being adversely affected in a competition in the home and foreign markets.

In absence of any planned efforts by the State, there is no scientific fruit cultivation in Bengal. Its bright possibilities cannot be over-emphasised. The history of the fruit-growing industry in California where fifty years ago fruit cultivation was practically unknown should be a lesson with us. What is needed is as follows:—

(a) To encourage the cultivation of fruits on scientific lines, eliminating poor strain and making available to the cultivator strains which yield a plentiful crop of fine flavoured fruit;

(b) To introduce a system of grading fruits so that the wholesale buyer knows what he is buying;

(c) To make arrangements for central marketing to ensure that the fruit is properly packed and that there is the control of price-levels;

(d) To set up an organisation to develop foreign markets and watch the interests of fruit-producers abroad.

Conclusion

The State should pursue a progressive forward agricultural policy. Credit¹ alone cannot help the agriculturists; it must be coupled with the promotion, almost

1. "Credit alone cannot convert an unprofitable industry into a profitable one. Credit may enable an individual to make a certain operation pay which might not otherwise pay or might not otherwise be undertaken at all and the price which the producer has to pay may just turn the scale towards profit or loss in his own case. Viewed in this way, credit may be an important factor in the cost of production in individual cases but it is mainly in other directions that a solution must be sought of the difficult problems of how agriculture can be made to pay." Report of the Committee on Agricultural Credit in England (1923).

enforcement, of thrift, providence and heedfulness in borrowing. The history of the Agricultural Bank of Egypt¹ provides a wholesome corrective to the views of those who hold that the problems of rural debt are to be solved at a stroke by the provision of cheap and abundant credit. "Economic progress and development of banking being interdependent, banking cannot make any advance in a community sunk in poverty, ignorance and helplessness. Credit would merely supply grease to the economic machine and it is essential that all possible measures should be taken to ensure the efficient working of the entire mechanism." There must be measures for raising the standard of living and economic condition of the population and for building up its productive strength. The well-known formula of rural economy is "Better Farming, Better Business and Better Living." The Agricultural Tribunal of Investigation in England analysed the factors that go to make agriculture a paying industry and these factors are :—

1. Removing the existing impediments to efficient production,
2. Lowering the burdens of taxation,
3. The fiscal organisation of the country and in particular the assistance to agriculture by tariffs and subsidies,
4. The economic organisation of the industry and in particular the development among farmers of

1. This bank was established in 1902 and in four years the bank advanced huge money; over-borrowing and outlay on unproductive expenditure by farmers led to the failure of the scheme of cheap advances and a policy of foreclosure on the mortgage, with the sale of the land, was widely adopted against persistent defaulters.

methods of purchase and sale and Co operative insurance,

5. Instituting of schemes for the improvement of land, live-stock, and crops, elimination and control of other assistance to industry subsidiary to agriculture and developing afforestation,
6. Organising the transport system of the country with due regard to the interests of agriculture,
7. Establishing a system of sound general education and special provision for agricultural education and research and for embodying the results of such research within the practice of the agriculturist,
8. The developing of State or voluntary organisation to provide the necessary central and local machinery for carrying out measures of agricultural policy and for influencing policy.

Thus the active pursuit of a progressive agricultural policy is necessary. The interest of the whole nation demands it. The Businessmen's Commission on Agriculture in America rightly said:—"Agriculture is not merely a way of making money by raising crops; it is not merely an industry or a business; it is essentially a public function or service performed by private individuals for the care and use of the land in the national interest; and farmers in the course of their pursuit of a living and a private profit are the custodians of the basis of the national life. Agriculture is therefore affected with a clear and unquestionable public interest, and its status is a matter of national concern calling for deliberate and far-sighted national policies, not only to conserve the natural and human resources involved in it, but to provide for the national security, promote a well-rounded prosperity, and secure social and political stability."

It is proclaimed that the landlords do little for the development of their estates on modern scientific lines but it is well-known that the tenancy law restrains them from obtaining unrestricted possession of a compact area and prevents them from securing a full and fair return from the proceeds of their enterprise.¹ If the increasing prosperity of the tenants resulting from improvements by landlords does not add to the increase in the income of landlords, it is really unfair to blame them for their fancied indifference to the interest of the ryots. Unless the courts are given the power of compelling the tenants to accept one of the three alternatives, viz., to have their occupancy rights bought out by the landlords, or to accept other land of equivalent value in exchange, or to pay the extra rent on the completion of the permanent improvements, the landlords cannot be blamed for their shyness in investing capital for the permanent improvements in their lands. We know how difficult it is for the landlords to prove the increased productivity of lands through their improvements and human nature as it is, no one would risk his capital for the distant and faint chance of enhancing his rent under the stringent provisions of the Bengal Tenancy Act. It is really difficult to understand our publicists who want the landlords to play a very important part in increasing the agricultural wealth of the delta especially when their rights and powers are crippled by the tenancy law. Suppose a landlord desires to undertake his own cultivation according to improved methods, he cannot do so if the land suited to his purpose is in possession of occupancy tenants. In such cases, the courts should have powers to compel the tenants either to accept other land in exchange or to have their occupan-

1. Vide Report of Royal Commission on Agriculture in India, Paragraph 358.

cy rights bought out by the landlords on a fair price.¹ There are other obstacles: the occupancy tenants cannot be evicted. If occupancy tenants continue to exhaust the soil by habitual carelessness in cultivation or to damage the crops of their neighbours by neglecting to clear their land of weeds, or by draining it into that of their neighbours, or by allowing their cattle to stray, the courts must be empowered by legislation to warn such tenants, on the application of their landlord, that they are liable to be evicted unless they stop such practices, and if these warnings go unheeded to order their eviction, after careful enquiries, on the condition that the landlords pay them the compensation that may be determined by the courts for the loss of their rights and for any permanent improvements that they may have carried out on the holdings concerned.²

Before laying blame at the door of the landlords, restrictions put on them by the tenancy law should be taken into account and the Royal Commission on agriculture in India said that "where existing systems of tenure or tenancy laws operate in such a way as to deter landlords, who are willing to do so, from investing capital in the improvement of their land, the subject should receive careful consideration with a view to the enactment of such amendments as may be calculated to remove the difficulties." Therefore, in the future amendments of the tenancy legislation, the point of view urged by the Royal Commission on Agriculture deserves sympathetic consideration and the

1. The fair price, according to some, is between twenty and twenty-five times the difference between the rent payable by the occupancy tenant and the full rent which the same land would yield if let to a yearly tenant.

2. Prof. Panandikar's "Wealth and Welfare of the Bengal Delta," P. 312-13.

obstacles to progress, mentioned above, should also be removed. In view of such contentions, the case for a review of the existing tenancy law where it restrains the landlords in their legitimate efforts gathers force. But it is rather a tragedy of good intentions self-defeated when amendments are brought forward in all seriousness which seek not to remove the restrictions on landlords but to confer more unnecessary powers on the ryots by violently disturbing the acquired rights of landlords. It is a fundamental principle of social economy that violent disturbance of acquired rights, however unfair they may have been in their origin, is not desirable and in practice would led to no end of trouble ; the repercussions will be felt very far and sometimes in unexpected quarters. It must be borne in mind that the present landlords of Bengal are not, in many cases, hereditary successors of the original holders ; they are the economic successors. "They are *bona fide* holders, who have invested their savings in the form, which has been commended and considered attractive. They might reasonably claim that they have a right to the protection of the State against any suggestion, which would deprive them of their present position under the present law. In the matter of deprivation by third parties by unfair means, the claim of landlords would be absolute and unanswerable."

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